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Proceedings of the Special Committee on Municipal Code

SEVENTY-FIFTH GENERAL ASSEMBLY
Extraordinary Session, Aug. 26 to Oct. 22, 1902

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PROCEEDINGS

OF THE

SPECIAL COMMITTEE

ON

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3760

75th General Assembly.

EXTRAORDINARY SESSION.



COLUMBUS, OHIO.
FRED. J. HEER, PRINTER.
1908.



PROCEEDINGS

OF THE

SPECIAL COMMITTEE

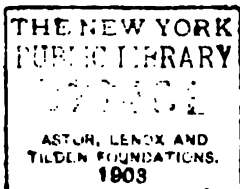
ON

MUNICIPAL CODE

75th General Assembly.

EXTRAORDINARY SESSION.





75th General Assembly. }
Extraordinary Session. }

H. R. No. 6.

MR. GUERIN.

A RESOLUTION.

(Offered Tuesday, Aug. 26th.).

Resolved, That for the purpose of considering all bills relating to the government of municipalities of this state, introduced in the House of Representatives during the present Extraordinary Session, or which may be messaged to it from the Senate, the Speaker of the House appoint from the members of the House a special committee not less than seventeen (17) members, whose duty it shall be to consider each of said bills in as expeditious a manner as possible and report the same with the result of its deliberations to this House for its further consideration.

On motion of Mr. Guerin the rule was suspended and the resolution adopted.

The Speaker of the House appointed as a special committee under H. R. No. 6, Messrs: Comings of Lorain, Painter of Wood, Guerin of Erie, Price of Athens, Cole of Hancock, Williams of Hamilton, Metzger of Stark, Thomas of Huron, Chapman of Montgomery, Allen of Fulton, Silberberg of Hamilton, Worthington of Belmont, Denman of Lucas, Hypes of Clark, Willis of Hardin, Gear of Wyandot, Stage of Cuyahoga, Bracken of Franklin, Ainsworth of Defiance, Maag of Mahoning, Huffman of Butler, Brumbaugh of Darke and Sharp of Fairfield.

The special committee organized by selecting Hon. A. G. Comings Chairman, Hon. F. B. Willis Vice Chairman and Hon. I. E. Huffman Secretary.

NOTE. — For bills as reported back by Special Committee see House Journal of Extraordinary Session, 75th General Assembly.

PROCEEDINGS OF THE SPECIAL COMMITTEE ON MUNICIPAL CODE.

WEDNESDAY, AUGUST 27th, 1902.

8:30 A. M.

The Committee appointed by the Speaker to consider the Code met in the room set apart for their use, with Mr. Comings in the chair.

The Chair: Gentlemen, it has been suggested, and I think it a good idea, that the members retain the seats which they have this morning. It will facilitate the work and we will know where to look for the members, and know just where to find them. I would also suggest that the roll be called at the opening of our sessions so we can keep a record of the attendance. The clerk will now call the roll.

The Clerk then called the roll and the following members responded to their names:

Mr. Comings, Mr. Painter, Mr. Guerin, Mr. Williams, Mr. Metzger, Mr. Thomas, Mr. Allen, Mr. Denman, Mr. Willis, Mr. Stage, Mr. Bracken, Mr. Ainsworth, Mr. Maag, Mr. Huffman and Mr. Brumbaugh.

The Chair: The next thing in order will be the report of the sub-Committee.

Mr. W. E. Guerin: Mr. Chairman, your sub-committee begs to submit the following report:

REPORT OF SUB-COMMITTEE ON PROGRAMME TO THE SPECIAL COMMITTEE ON MUNICIPAL CODE.

Your sub-committee on programme begs to submit the following report:

As to the time for the sittings of the committee, your committee recommend as follows:

Wednesday, August 27.....	8:30 to 10:00.
“ “	1:30 to 5:00.
“ “	7:30 to 9:30.

Thursday	9:00 to 12:00.
“	2:00 to 5:00.
“	7:30 to 9:30.
Friday	9:00 to 12:00.
“	2:00 to 4:00.
Thursday, Sept. 4th.....	10:00 to 12:00.
“ “	2:00 to 5:30.
“ “	7:30 to 9:30.
Friday, Sept. 5th.....	9:00 to 12:00.
“ “	2:00 to 5:00.
“ “	7:30 to 9:30.

And all other days.

As to the subjects to be discussed and the hearings to be given at the different sessions of the committee, your committee recommend as follows:

Wednesday, August 27, 8:30 to 10:00 A. M.—Report of sub-committee and the discussion of the Code by the committee. *

Wednesday, August 27th, 1:30 to 5:00 P. M.—Address by Wade Ellis, Esq., and Smith Bennett, Esq., on the principles and in explanation of the Governor's Code.

Wednesday, August 27th, 7:30 to 9:30 P. M.—Addresses by Judges Stewart and Okey, and Allen Ripley Foote, on municipal government.

Thursday, August 28th, 9 to 12 A. M.—Discussion by committee of the codes introduced.

2:00 to 5:00 P. M.—Addresses by members of the State Bar Committee on Constitutionality of different codes, etc.

7:30 to 9:30 P. M.—Discussion by the committee on the general principles to be embodied in the Municipal Code.

Friday, August 29th, 9:00 to 12:00 A. M. and 2:00 to 4:00 P. M.—General discussion in committee on the subjects pertaining to the Code to be decided by the committee.

Thursday, September 4th, commencing at 10:00 o'clock, 10:00 to 12:00 A. M., 2:00 to 5:00 P. M., 7:30 to 9:30 P. M. Mayors and cities and villages.

Friday, September 5th, 9:00 to 12:00 A. M., 2:00 to 5:00 P. M., 7:30 to 9:30 P. M.—City and village solicitors, and representatives of legal departments of municipalities.

Monday, September 7, 9:00 to 12:00 A. M., 2:00 to 5:00 P. M., 7:30 to 9:30 P. M.—Representatives of city and village councils.

Tuesday, September 8, 9:00 to 12:00 A. M., 2:00 to 5:00 P. M.—Representatives of boards of health.

7:30 to 9:30 P. M.—Boards of public improvement.

Wednesday, September 9, 9:00 to 12:00 A. M., 2:00 to 5:00 P. M. and 7:30 to 9:30 P. M.—Boards and chambers of commerce, municipal associations, builders' exchange and taxation commissions on the subjects of taxation and assessment and general principles of municipal government.

Thursday, September 10, 9:00 to 12:00 A. M., 2:00 to 5:00 P. M., 7:30 to 9:30 P. M.—Hearing to all persons interested in the discussion of franchises, and the granting and renewal of the same.

Further announcement of programme will be made as soon as possible after September 4th.

Your committee recommends that the general committee shall continue in session for hour specified for general discussion.

Respectfully submitted,

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.....
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Sub-committee.

Mr. W. E. Guerin: Mr. Chairman, I move the adoption of this report.

Motion seconded by Mr. Willis.

Mr. Bracken: Mr. Chairman, there are two other measures which I wish might be added, and are not in the report—I move you that Friday, September 11th, at 9:00 A. M., the celrgymen be invited to speak on the moral aspect of the Code; and in the afternoon from 2:30 to 5:00 that we hear members of labor interests—be invited to speak. That will allow everybody to come in. I want these special assignments for these particular interests.

Mr. Guerin: Mr. Chairman, at the bottom of the second page it says further announcement of progress will be made as soon as possible after September 4th. The reason that we did not go further was that we knew there were other subjects that we would desire discussed, and which we would want to ask to have discussed, or suggested, and

ask from other members the subjects which they might desire brought up—and it was the intention of the committee as soon as possible after September 4th to arrange a further programme giving opportunity to members of the committee who have anything particular they desired to have brought up for discussion. I hope the gentleman will withdraw his motion.

Judge Thomas: Mr. Chairman, there was nothing in the original motion providing for this committee, and we hoped the committee would not disturb this committee at present because we believe that it would be a very good way to dispose of the arrangement to have the committee look after it, and this was the very reason suggested by the gentleman from Franklin—we could take up the subjects he suggests, and arrange for them on the programme. The subject was spoken of yesterday, but we did not put it in because while knowing the importance of it, we thought we could arrange that later.

Mr. Bracken: The only desire was that we might introduce these elements here that are being sprung, that we might be prepared; but I have no objection to withdrawing my motion.

Motion of Mr. Bracken withdrawn.

The Chair: The question is on the adoption of the report of the sub-committee. Are there any further remarks?

Mr. Stage: Mr. Chairman, while we are on this subject, so that we may have it as a matter of record, not only the question of labor to be in this discussion, as suggested, but also to get those interested in the subject of civil service and the merit system. I mention this that we may have it as a matter of record.

The Chair: That is included —

Mr. Guerin: Mr. Chairman, we will take care of that a little later.

The Chair: Are there any further remarks? What is your pleasure, gentlemen, in regard to passing resolutions by viva voce vote?

Mr. Brumbaugh: Mr. Chairman, the report of the sub-committee has been accepted.

The Chair: The question is on the report of the sub-committee.

The Chair then put the motion, which was carried unanimously.

Mr. Allen: Mr. Chairman, I desire to make a motion that this sub-committee be continued during the sitting of the Committee, and that they take it upon themselves to ascertain the names of speakers, and also the order in which they speak, and fix the time, and allow about

two weeks. In that way we will have things in such form that we can go on with our business in order, and the work can be expedited, and we can accomplish more. This sub-committee, by continuing in charge during the sitting of this committee can look after all these details and report them to the committee here. The committee can take care of them in good shape.

Mr. Willis: Mr. Chairman, I second the motion.

Mr. Willis: It seems to me that this is a very wise motion, and I hope that it will prevail. In a committee as large as this, unless we have a sub-committee to look after these matters, we are going to get into a quagmire. It occurs to me it will be absolutely necessary that we have a strict program here, and shall follow strict parliamentary procedure, because we are not going to take the chances of getting anything done, and unless we follow strictly parliamentary procedure everything will be hurly-burly, and not being satisfactory. We should have a program from day to day, and assign the work from day to day, so that we will know how to prepare for it, and we will govern ourselves in a strictly parliamentary manner.

Mr. Williams: Mr. Chairman, I was going to ask for information. Suppose some members would have speakers or organizations that would want to be heard.

The Chair: They can report to the sub-committee.

The Chair then put the motion which was carried unanimously.

Mr. Brumbaugh: Mr. Chairman, I want to report to the sub-committee, and the committee also, that I was assigned the duty of speaking to Judge Okey, it was the duty assigned to me, and he agreed to be present.

The Chair: Is there any further business in detail to come before the Committee? Has the committee made arrangements for the printing of this programme, so that we can have copies of the dates?

Judge Thomas: I suggest that some one allow the Chairman to have his report so that he can look at it.

Mr. Guerin: In discussing the programme of the procedure here yesterday it occurred to us that it would be a very wise thing for us to have these proceedings in each one of the meetings taken down in shorthand by an official stenographer, and reduced to long-hand on the typewriter, and my idea was that if that could be done that we could arrange with the state printer to have these proceedings, all of the pro-

ceedings, and everything that goes on at the meetings printed, or if we want it, we can have one stenographer come in the morning and take down the proceedings, and after she goes off have it reduced to long-hand on the typewriter—we want the exact proceedings of the meeting—and give this and each one of the addresses to us as soon as possible thereafter. I believe that the formulation of the Code is of such importance that the people of the State—I believe that it is of as much importance to the people as the Constitution, and I believe that it would be needed from time to time in the courts when the question as to what the intention of the legislature was—the minutes of these meetings will be invaluable, and I think we ought to have that report subsequently printed, and I therefore move you that some committee be appointed to arrange for that.

The Chair: Gentlemen, you have heard the motion, is there a second? Motion seconded.

The Chair: The motion is that a committee of three be appointed for making further arrangements for keeping copies of these meetings.

Mr. Willis: I thought the motion was that the matter be referred to this sub-committee; I don't think there is any necessity for having another committee. I move to amend that motion so that it shall read that the matter of selection of stenographers be referred to the sub-committee.

Mr. Denman: I don't think that the sub-committee wants to do all the work. If we carry out and do what is laid out for us, I think we will have our hands entirely full. I hope that this amendment will not prevail, but another committee be appointed. I think it is necessary to have more than one stenographer. One stenographer cannot take in the afternoon and transcribe by the next morning. I do not think it would be possible for one stenographer to do our work. There will be a great deal of work connected with it—looking after speakers and addresses, etc., so I think we should have another committee. I am satisfied we will have all we can do.

Mr. Williams: Mr. Chairman, I think it is a good suggestion. I think if the sub-committee does the work faithfully they will have enough to do, and there should be a separate committee appointed.

Mr. Painter: I am not in favor of another committee, for the reason that this committee in arranging the programme is fully acquainted with the work along that line, and I don't think the additional work of see-

ing to the printing or arranging for the printing of the proceedings of this committee will burden them too much, from the fact that they would be all the time familiar with the arrangement and the program. I think it is the duty of the committee to shoulder this responsibility.

The Chair: All in favor of the motion say aye.

Motion overuled.

The Chair: We will have the roll call. The question is on the amendment of submitting it to the sub-committee instead of a new committee.

The roll was then called and resulted in the motion being carried.

The Chair: The question now is on the original motion. Those in favor of the original motion as amended say aye.

Motion carried.

The Chair: The whole matter is now referred to the present sub-committee. Is there any other matter on the program this morning?

Mr. Guerin: Mr. Chairman, I desire to call the attention of the committee to another matter of somewhat vital importance. The Governor's Code, the only one before the committee at the present time, contains several pages of what is known as the repealing clause statutes; and then there is the blanket clause at the end of the Code which says that all acts, parts of acts or statutes inconsistent with the statutes herein enacted are hereby repealed. That really is work that cannot be taken up by the committee, and I think three members of this committee, who can have the assistance of Mr. DeWitt, clerk of the revision committee, who was at the work all winter, and go over the statutes, examining every section mentioned in the Governor's Code, and also to examine the volumes of the statutes and see what other statutes not mentioned are affected, directly or indirectly, by this blanket clause at the end of the Code. That work is not the work of a day or two days, but the work of a couple of weeks. I think it is one of the most important things in the work before us, and I move you that a committee of three be appointed to take in hand the work of examining the sections of the statutes repealed in the Governor's Code, and also those affected by the blanket at the end of the Governor's Code. I think that this committee should be appointed now and enter on its work, and report to the committee.

Mr. Brumbaugh: I agree with the speaker that this is important work, and possibly the most important part, and the most delicate part.

of the work on the Code. My own opinion is that the committee ought to be composed, this special one, of the best lawyers obtainable, and I doubt whether this committee, with all that has been arranged for, will have time to do that work, in the manner it ought to be done. I think it possibly would be better to select three good, capable lawyers outside of this committee. I surely think that they should be members of the legislature; that no part should be delegated to any one else. The responsibility of having this correct is upon us, and a great many things may be slipped in, and of course we want to be absolutely sure that we are on a solid foundation in this matter. I doubt very much whether members of this committee will have time to go over that work.

Mr. Willis: I second the motion; change the committee to three to take up the work connected with the repealing clauses. I think the committee of three ought to be appointed from our committee here. I shall be compelled to disagree with my friend. It seems to me this committee has to bear the responsibility, and I think it ought to be made up of the membership of this committee. We have lawyers here, and think that committee ought to be made up of three first-class lawyers; they should come from this committee, since we have to bear the responsibility.

The Chair: Are there any further remarks?

Mr. Brumbaugh: Mr. Chairman, I want to say that I have no objection to the committee coming from this committee, but I doubt whether any member of the committee would have the time to look after the matter properly.

Mr. Guering: Mr. Speaker, I think that this Code, before we get through with it, will have to be divided up among members, and different ones appointed to look after different parts of the Code, and I don't think, as I said before, there is any one part of our work more important than this. I believe that as long as the responsibility has been thrust upon us, we ought to meet it ourselves, and not go elsewhere for assistance. There are enough good lawyers here to handle this work. I should like very much to see the committee from the members of this committee.

Mr. Cole: I am heartily in favor of the suggestion of Mr. Guerin. I also believe before we get through with the consideration of the bill we will have to turn the work to sub-committees as the old aphorism goes, "We can know something of everything, and everything of some-

thing." It ought to be the duty of the sub-committee to look critically into the different parts of this bill, but I think that perhaps it might not be well to appoint this committee at this time, but appoint the committees in relation to each other. We might select our best lawyers to fill this position, and in the subdivision and when we come to other committees where it is necessary to have good lawyers, we will have all on one committee. I think it might be well to systematize the work when selecting your committees.

Mr. Guerin: I think Mr. Cole's suggestion is good, indeed. My idea was simply this: to have them arrange a time when they could consult on this work. I didn't expect them to sit while this committee was in session, but if possible when they had leisure—when at home—they could go over this matter. I think there is more work on the sections—repealing sections of this Code—than on any other part.

Mr. Williams: Mr. Chairman, I disagree with the gentleman from Hancock. I think the duty of this committee will be about the most laborious of any.

Mr. Cole: Mr. Chairman, in support of what I said before, there are other matters we must meet. This is an important matter, but there are other matters fully as important as his proposition, and I think the only safe plan is to systematize this work, and appoint committees one in relation to the other.

The Chair: Gentlemen, a motion is before you that sub-committees be appointed to take up the matter of repealing clauses in the Code.

The motion was then put to a vote and carried.

The Chair: I will report that committee at the afternoon session. Is there any other item of business to come before the committee?

Mr. Williams: I suppose that most of the members, like myself, have no Statutes with them. It seems to me there ought to be some Statutes at the disposal of the committee, and I make a motion that the Chair order a certain number of the Statutes, at least five, to be used here.

Motion seconded.

Mr. Bracken: Mr. Chairman, I don't think we ought to buy any, because they have already been bought for us. I think secure would be the better word, as all have already been provided with them.

The Chair: I think secure will cover that, Mr. Bracken.

Mr. Allen: Mr. Chairman, I would like to amend that motion in this way: that five sets of the statutes—I think every sub-committee

should have the statutes. I favor the motion; I think it is wise, and I move that the chairman be instructed to see that each sub-committee and this committee is provided with a set. I make this as an amendment, if it will be accepted.

Mr. Williams: I accept the amendment.

The Chair then put the motion as amended, which motion was carried.

The Chair: Is there any other business?

Judge Thomas: As a member of the committee on programme I want to say this: Now, every member of the committee is interested in the entire Code, but some of us will be better prepared on one part, and some on another part. Now, in the discussion of the Code, or various parts of it, this committee on programme would like to know from individual members of the committee what particular part they have studied up so that in planning for the discussion we can appoint certain members to follow in the discussion so as to facilitate the work. It is the province of this committee to notify individual members of the committees and the press of the topics as they arise, and we would like to know so that we can assign subjects to them ahead that they may have time to prepare. We wish that the members of the committee would confer with some members of the sub-committee and let us know what particular part you have information on, or particularly interested in, or would be willing to study up on, so that we can assign certain subjects to you, and give you a chance to be heard.

Mr. Allen: I would like to make a suggestion. It seems to me a committee of this size ought to have some rules to govern them. They ought to adopt a set of rules for business. They ought to have an order of business. Whether or not this sub-committee is instructed to arrange rules and order of business I don't know; but I think it is a thing we ought to have, so that the chairman of the committee has his rules and order of business before, and it can be conducted in a parliamentary way.

The Chair: The Chair understood that that would be the province of the sub-committee.

Mr. Guerin: We will report to the committee our action.

The Chair: Have you any further business, gentlemen?

Mr. Painter: Mr. Chairman, as it is only half an hour till the legislature convenes, I therefore move you that we now adjourn.

Mr. Brumbaugh: Mr. Chairman, I think we ought to have a report from the gentlemen who have seen the speakers.

Mr. Denman: Mr. Chairman, it has been assigned to me to see Mr. Bennett, but it was impossible to find him either by telephone or at his office last night, but I will see him shortly.

Judge Thomas: I saw Mr. Ellis last night, and he said he would be present.

The Chair: The motion to adjourn is before you.

Motion seconded and carried.

And thereupon an adjournment was taken to 2:30 P. M..

75TH GENERAL ASSEMBLY,
HOUSE OF REPRESENTATIVES.

AUGUST 28th, 1902.

Pursuant to adjournment, the Committee met in regular session at 9:15 A. M. On roll-call the following members responded to their names:

Ainsworth,	Hypes,
Allen,	Maag,
Bracken,	Metzger,
Brumbaugh,	Price,
Comings,	Silverberg,
Cole,	Stage,
Champman,	Thomas,
Denman,	Williams,
Gear,	Willis,
Guerin,	Worthington,
Huffman,	Painter.

Upon motion, the reading of the minutes of the previous session was dispensed with.

Mr. Silverberg was recognized by the Chairman.

Mr. Silverberg: I would like to get some information as to the function of these committees. I notice we have here a Committee on Villages, and then also a Committee on Cities and Villages. Does not that conflict, Mr. Chairman?

The Chairman: No; I spoke of that yesterday. It might seem to conflict, but one committee is to determine the line of demarkation between cities and villages merely, and then the villages will be a separate and distinct subject.

Mr. Silverberg: Then the Committee on Organization of Cities and Villages is not to take any cognizance of the Committee on Villages at all?

The Chairman: Only as to the distinction between cities and villages, that is what I had in mind — the population; you are to decide in your own mind as to the division, by population, whether five or ten or fifteen thousand.

Mr. Silverberg: Then they will be separated, and the villages given to one committee, and the cities to another?

The Chairman: That is the thought now in my mind.

It was announced that Judge Okey, who was expected to address the Committee on the Code, was not present.

Mr. York, the introducer of one of the Codes, was given the floor and made the following statement:

Mr. York: I would like to make a statement: At the present time, I am entirely unable to discuss the features of this bill; as it has not been printed, we are not yet furnished with copies, and I have not had an opportunity to see it. I do not anticipate that I would be able to furnish a brief of any kind upon this subject without at least two days of thought. It will not be my part to discuss the constitutional features of the bill,—that will be left to Judge Okey, when he comes. As I say, I am not prepared to discuss this bill this morning, not until it is printed and in form to be examined, and I doubt very much whether it is good policy for this committee to take up a bill such as this, especially such an important bill as this, and undertake to discuss it without the bill to refer to before them. You may get a general notion of the bill, but also, you may get a wrong conception, unless you have studied the bill; therefore I am in hopes that this committee may fix a later date at which you can take up the bill after the committee has had an opportunity to look it over carefully. Do you not think that would be an advantage to you, gentlemen? It would be to me, I believe, if I were on the committee. At this time, if Judge Okey is not here, I would ask this committee to fix some later date for this.

Mr. Denman: Can you tell us, Mr. York, what the general provisions of the bill are? Just go over the general provisions, without discussing the merits of it.

Mr. York: No, I think that would hardly do, because I might have a misconstruction of the bill itself. If you want to hear something on the bill, I would like to hear from Mr. Thurman, until I am better prepared.

The Chairman: The committee will note the request of Mr. York as to this matter, and it will be considered later; I will refer this matter to the sub-committee.

I believe the chairman of the sub-committee has spoken to Mr. Thurman and he has consented to give us his ideas. I will ask Mr. Thurman to step forward and address the committee. Mr. Thurman.

Mr. Thurman: *Mr. Chairman and Gentlemen of the Committee:* I do not wish, in any kind of way, this morning to discuss any of the con-

stitutional or local features in connection with this Code to be presented, except in a very general way. I prefer to speak of it, rather, and to give the practical reasons, in a way, why I believe that the cities of the State of Ohio should be given what is known as absolute self-government. Many, many years ago, I devoted quite a long time to the study of these different questions. At that time the Board of Trade of the city of Columbus took great interest in it, and they used to give banquets to the General Assembly, or to each new General Assembly, upon its convening here. At one of those banquets, in February, 1892, I was requested by the Committee of the Board of Trade to respond to the toast "Municipal Reform," and with your permission, I want to read that speech right over to you, because I would not change one single, solitary word of it, if I should write it over a dozen times, and as it was made to the members of the General Assembly, I would like to make it again to the members of this committee, who are also members of the General Assembly, following it with one or two remarks that I wish to make in connection with it.

This little address just simply embodies what I consider as the fundamental principles upon which all these things must rest. "Municipal Reform" was the title of this address, and it was made at the Board of Trade banquet to the 70th General Assembly, February 16th, 1892:

"I am to respond to the toast of "Municipal Reform." The longer any of us consider this question in perfect good faith with ourselves, and with the sole purpose of ascertaining the truth for the sake of the truth, it cannot help but become apparent that it resolves itself into another one, and that is: Are people, when gathered together in large communities, capable of self-government? If they are, I take it there is a solution of the problem. If they are not, then, under these conditions, at least, this theory of government must be admitted to be a failure. For an American who loves his country and its institutions, to concede the latter, and especially, when the former has never been given in its true sense and full scope, a single trial, would not only be most humiliating, but also a cowardly surrender of those principles upon which this mighty Republic, 'The land of the free and the home of the brave,' was founded."

Mark that, gentlemen,—the federal plan of government has never in any single case that I know of, anywhere in the United States, been given a full, and free, or even a single trial. Every single form of government that has pretended to be a Federal form of government, has

been a bastard one; the true form of Federal government has never, to my knowledge, anywhere in the United States, been tried in the government of cities, and I repeat, to say that it is a failure, it seems to me, would be "not only most humiliating, but it would be a cowardly surrender of those principles upon which this mighty Republic was founded."

"Not only, too, would such a concession be humiliating and cowardly, but it might also be the means of establishing a precedent which might result not only in a gradual subversion of our form of government, but even of liberty, itself.

"Taking it, therefore, that none of us is willing to admit that we are incapable of governing ourselves, but, on the contrary, that this is just exactly what we are capable of doing, let us not beg—" I am speaking now of the citizens—"let us not beg or even ask, but demand it as our right, of every legislature which convenes in yonder Capitol until we obtain it—true local self-government.

"The very fact that we have, during late years, heard so much of municipal reform, and also, that occasionally, the different legislatures in their wisdom, have been induced to make some few thousand changes, proves conclusively that it cannot be said of the present system that it has been a glittering success.

"The cities of Ohio, however, are not alone in suffering from the good deeds of wise and patriotic law-makers, for the legislatures of every State in the Union seem to have tried to excel those of their sister States in doing those things which they ought not to have done, and leaving undone those things which they should have done.

"Neither is this question now confined to the United States, for everywhere in the civilized world is it being agitated, but as yet, nowhere can it be said to have been satisfactorily solved.

(It was at that time, to a great extent, discussed, and to a great extent it has been settled in England.)

"Some may, in fact some do, think that in England they are on a fair road toward it, but I take it that here, as in many other cases, 'Distance lends enchantment to the view.' Beside the environment there being so entirely different from our own, I do not think that we would be justified in following it; especially so, too, when we have a system of our own, the success of which in all the other departments of our political fabric is admitted not only to be a success, but also to stand as a beacon light to guide all people who wish to be free.

"I say, then, let us by trying this, again prove to the world that the principles upon which our government is founded, are true, and more, demonstrate thereby that no matter what the surrounding conditions may be, the American people, in every department of government, are capable of wisely and honestly governing themselves.

"Now, how can this be accomplished? In this way:—Let the General Assembly (I want to speak a word in regard to this matter when I have finished reading this) let the General Assembly submit an amendment to the constitution of the State, giving to the people of the cities the power to call municipal conventions for the purpose of framing such forms of government as they may deem best, and with the sole power to amend and alter the same by the same means, when required. When this is done, each city can adopt its own form of government. That different plans will be chosen, no one can doubt. Some may elect to govern themselves by boards, some may adopt what is known as the Federal plan, while others may continue their present government, or frame one different from any of these. But in this way, you will open a field in which experience itself will be the teacher, and where all must know that they must work out their own salvation. And why should not this be done? Has not experience proved conclusively that the General Assembly cannot govern our cities? In fact, has not every attempt made by it, been absolute failure? And is it difficult to see why this is so?

Our State government is patterned after and is a part of our Federal government. Each is independent of the other within its sphere. As Chief Justice Marshall put it, 'They are each sovereign with respect to the objects committed to it, but neither sovereign with respect to the objects committed to the other.'

"The Federal Constitution, Article 10, also says: 'The powers not delegated to the United States by the constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people.' Here it is specifically denied to the general government to exercise any but those powers which have been specifically granted by the people. All others are reserved to the people. Now, why were our forefathers so jealous upon this subject and so careful to preserve the rights of the States and of the people? It was, among other things, because of all the countries in the world, America, for the preservation of the liberties and prosperity of the people, needs local self-government. On the other

hand, the state constitution prescribes just the contrary, that all powers not specifically granted by the legislature to the people of the cities, in regard to their government, shall be withheld from them. In the case of *Collins v. Hatch* the Supreme Court sustained this view, saying, "This power can only be exercised where it is specifically granted in the act of incorporation." (Of course, that was under the old constitution.)

"Again, if our forefathers thought it was wise and necessary that these privileges should be given to about 60,000 people, the whole number of inhabitants Ohio had when admitted to the Union, if it was known to the people of this state at that time, that its progress and prosperity depended upon powers being granted which would enable them to govern themselves, are not the reasons the same for believing that the citizens of cities containing five times sixty thousand people would also be benefited and made more prosperous in the same way? Have the men of Ohio, has human nature so changed in the short time of ninety years that what was true of them then is utterly false now? If there has been such a remarkable change during this time, then they (the people of Ohio), through their General Assembly, are no longer capable of enacting laws for the government of the state at large, but should surrender this power to those who gave it, namely the Congress of the United States.

"Will any of you gentlemen who are members of the legislature admit that the Congress of the United States is better able to enact laws for the internal government of this State than you are? On the contrary, does not each and every one of you know, as the late Governor Seymour so eloquently expressed it, "If our general government had the legislative powers which are now divided between the town, county and state jurisdiction, its attempt at their exercise would shiver it into atoms. If it was composed of the wisest and purest men the world ever saw, it could not understand the varied interests of a land as wide as all Europe, and with as great a diversity of climate, soil and social conditions. The welfare of the several communities would be constantly sacrificed to the ignorance, the interest, or prejudices of those who had no direct interest in the laws they imposed upon others."

(I want you to listen to that, because I think it is an extract which embodies the principle of local self-government in about as eloquent words as I have ever heard.)

"What is said here in regard to the general government intermeddling with the affairs of state government, is exactly true in regard to the State government intermeddling with our different city governments. The welfare of these cities has been constantly sacrificed 'to the ignorance, the interest or prejudices of those who have no direct interest in the laws they imposed upon others.'

"This may appear to be severe, but why will you not all admit that Congress is better able to administer our affairs than are we? Simply because any one of you would say, how could it be possible for a member of Congress from Texas, Florida, Oregon or Maine, wisely to decide what was best for the internal government of the State of Ohio? Justly could you ask this question, and just as reasonably can we ask, how can the representatives from Williams, Gallia, Adams and Meigs wisely decide what is required best to administer the affairs of the people of Cincinnati, Columbus, Cleveland, Toledo and Dayton? So far, therefore, we are subjected to your ignorance. Now, how to your interest? In this way:—Through a kind of courtesy, or a false courtesy, the members of the different General Assemblies have established a kind of reciprocity treaty between themselves. The member from Williams county has some little ditch, or road, which he wishes to have built in his county. The member from Gallia, the member from Meigs, the member from Lawrence, has the same,—what are known as 'local bills.' Interested men on the other side have bills for the government of cities, whereby they, not the people of the cities, may be benefited. You then agree to 'swap votes,' yours for his and his for yours; there is your interest. I do not, by this, mean to reflect in any way upon the honor and integrity of the different members of the legislature, because it is not the lack of this, but rather, the perfectly natural desire to accomplish that which you all believe your own immediate constituency requires; but in the endeavors made to attain these ends, you too often thoughtlessly get yourselves into the position of the Kentucky colonel, who said 'He didn't care a damn what happened, so it didn't happen to him.' Your prejudices can be aroused in so many ways that it is scarcely necessary to point them out.

(This refers now, to the Heffler law, which was passed at that time.)

"Our own city affords one example: Last winter we had a patriotic Democratic General Assembly that tore up the whole government of the city of Columbus and gave us an entirely new one. It was charged

that this was done for political purposes. Anyhow, three members of the Board were Democrats, and one a Republican. Now, the political complexion of the General Assembly having somewhat changed, I certainly cannot blame you for being prejudiced against the acts of a former one that turned all your friends out of office. So, you see, the words 'ignorance, interest and prejudice' (and I do not use these words in an offensive sense, but just as you, yourselves, would use them in speaking of the Congress of the United States) are not too strong, but that they convey exactly the truth in every way you can look at it.

"Again, the substitution of the present constitution of the United States for the old Articles of Confederation, was urged and finally adopted for the purpose of eliminating from the administration of the general government, just such evils as we of the cities now complain. Under these Articles, the powers granted to the United States were so vague and undefined and so continually interfered with, that they were found to be wholly inadequate to maintain that which was most sorely needed, namely, stable and good government; and, as if to emphasize this, the preamble of the new Constitution begins with the words: 'We, the people of the United States, in order to form a more perfect union,' etc. The United States, then, like the cities now, had grown, were expanding in every direction, and it was found to be an impossibility to conduct their affairs properly when continually interfered with by the States. Our forefathers were not only wise enough to realize this, but also to grant such powers to the general government as would make it absolutely free and independent within its own sphere. Now, the cities, like the Federal government, having outgrown their swaddling clothes, demand that the General Assembly give to them, within their proper sphere, that which the United States obtained from the states, and what each state has always held as belonging to the people of the several States, namely, the power to manage their own affairs, free from any intermeddling by any General Assembly with things with which they ought never to have anything to do.

"Permanent municipal reform, though, gentlemen of the legislature, can never be secured until there is enacted a primary election law, whereby the people can absolutely dictate who shall administer their affairs. Such a primary election law should have all the safeguards thrown around it that are now thrown around the general election laws, and these last should be so amended as to forbid any citizen voting at the

general election who had not first cast his vote at the primary. If then we do not have good government in cities — but not until then — will I admit that people, when gathered together in large communities are incapable of self-government.”

I do not think, gentlemen of the committee, that I would change a word of that little address made ten years ago. I want to say, however, one word in regard to why I think that a constitutional amendment should be provided. I believe that the same thing can be brought about, that is, cities given absolute local self-government, without that constitutional amendment, but they can always get back into the legislature. I am in favor of a constitutional amendment because that would make it absolutely impossible for dissatisfied people in cities to hurry to the legislature whenever they got into any trouble. The organic law of the state would provide a way whereby they would have to take care of their own affairs. The quicker it is understood in all the different cities of the United States that each must take care of its own affairs, that they cannot run to somebody else for help, continually, the better government; and the better interest, and the greater interest, the better people of the cities will take, and the better government we will have in all the different municipalities. Of this, I am just as well convinced as I am that I am standing here, and in that connection, I want to say one word in regard to the last paragraph of my address, as to primary elections. If there ever was a time, gentlemen, in which a proper primary election bill could be enacted into a law, it seems to me it is at this session of this General Assembly, because you are now going to start these cities out in an entirely new way; you are going to provide for the election of officers; you are going to provide either for the election of boards, or the choice of different men who are to administer the affairs of the city.

Now, while you are doing that, provide a way whereby the better people of these different cities may have some kind of an equal show, in every kind of way, in saying who should be the candidates for these different offices; because I want to say to you this:—That while it is generally supposed and is the general idea, that the people of this country are sovereigns, the truth of the matter is, that they are only sovereign on the days of election, because on those days they delegate all powers they have away to their servants.

Now, why do they exercise that sovereignty? They exercise it because they want to say who shall administer their affairs; that is, who

shall hold their offices, and the only true way in which that can be done is by passing some kind of a law which will enable the people of the different cities to say who shall be candidates for the various offices. As it is now, the general public has no voice in the matter; a few of you gentlemen get in a back room, and a few gentlemen in Columbus — I have been there and I know all about it — or in other cities, get together and pick out a ticket, and when the people go to the primary election, they do not have a chance to make a choice of their own; they have to choose between those whom some one else has already chosen for them. Now, I say, put them on an equal footing; put them, too, gentlemen, where they cannot all the time cry that all the politicians and all the people who have anything to do with politics, are a set of scoundrels; arrange it so that the "good people," so-called, who are all the time complaining, shall stand on a perfectly equal footing with everybody else, political machinery, politicians and everybody else, and then if they have bad government let them have it, for they deserve it.

Pass that kind of a law, at the same, give these people of these different cities just as wide a scope as is possible to govern themselves, and I believe you will have done then what the constitution, not only of the United States, but of the State of Ohio, prescribes that you should do.

I have never believed other than that section six, Article 13, of the constitution simply meant that the legislature should provide for the organization and not for the government of cities, and if the first bill that was passed, the first municipal law that was passed May 2nd, 1852, had stopped at Section 16, the lawmakers would have done all that the constitution required of them.

There they had provided for the organization,—that is the way by which a people, a body politic, might become a corporate body, and if they had stopped there, and then let the people of the different cities run it themselves, we never should have had anything like the amount of trouble we have had in regard to the government of these cities. Now, get back to that as near as possible, and I am sure that you will not only confer the greatest benefit upon the people of the State, but that you will all be remembered to the longest day that you may live. I thank you.

Mr. Chairman: Mr. Thurman, the members wish to ask some questions.

Mr. Painter: I would like to ask Mr. Thurman a question.

The Chairman: Mr. Painter.

Mr. Painter: I would like to ask Mr. Thurman how the theories that he has advanced to us so eloquently agree with the decision of the Supreme Court?

Mr. Thurman: Well, the decisions of the Supreme Court of late have been so varied that it is pretty hard to say. I think you will have shown to you a great many decisions sustaining this position, but whether they would stand to-morrow, I cannot say.

Mr. Painter: That is just exactly the trouble of the legislature.

Mr. Thurman: I appreciate the difficulty you are all in, with the Supreme Court deciding this way and that way, here to-day and there tomorrow, and in view of all this it seems to me that the legislature ought to get down to something like fundamental principles, and I believe the fundamental principle underlying this whole thing is the local self-government of cities, local self-government, and I believe that one of the features of this government is that power is never given to the General Assembly to take away from the people. I do not believe the General Assembly has any right, or that it was ever conferred upon it, to take away the power of local self-government.

Mr. Willis: What is your view, Mr. Thurman, of the origin of municipal powers?

Mr. Thurman: You are now trying to get me into a constitutional argument, something I declared I was not going to talk about. When Judge Okey gets here, and all the lawyers get here, please ask them. I will say I have a book that I wrote upon this subject about twelve years ago.

Mr. Willis: Here is another question that is not legal: You suggested that by adopting this plan, we would open the way for some needed reforms in municipal governments. It seems to be agreed on all hands that there is confusion in our municipal governments now. Would there be, in your judgment, any danger of further confusion, if we were to adopt this plan? Would there be any danger there, do you think?

Mr. Thurman: I do not think so; there might be for a time, but in the end it would result in greater benefit; because I think it is a great mistake to think that you should have uniform government, a uniform system of government for all the cities of the state of Ohio;

what is applicable to one city, may not be to another. If you will pardon me a moment, I will say that twelve or fifteen years ago the Board of Trade of this city appointed a committee composed of Mr. Noble, who was one of the finest lawyers I know, Mr. Charles E. Burr and myself, to draft a charter—constitution—for the city of Columbus. We worked faithfully and long for two years, without any pay, just simply for what we thought would be the good and benefit of this city. It was given to me to start the work. I do not think that for two years I rested; after I would work all day upon one part of it, I would go back the next morning and find that I had either omitted something I should have inserted or inserted something I should have omitted; it was strike out and insert, strike out and insert, until I got so that I didn't know whether I was afoot, horseback or riding a mule. Then when I got through with it, it was sent to Mr. Burr for his correction and suggestion, and when he got through with it he sent it to Mr. Noble, whom we considered the dean, and when it got back to me I hardly knew it. The result of it all was that at the end of about two years we threw the whole thing away, and went to the Board of Trade and reported that we could not do it. Now, if we could not draw a charter for the government of one city in the state of Ohio, please tell me, gentlemen, how you are going to draft one that is going to fit all of the cities in the State of Ohio? What is applicable to Cincinnati is not applicable to Columbus; what is applicable to Cleveland will not be applicable to Chillicothe, and the result of it will be that when you adopt that kind of a code, in which you are going to state specifically each one of these powers that can be exercised by these different municipalities, why somebody will come from one, or the other, or all of them at the same time, into the legislature, and it will be the same old cry over again, just as certain as fate, and it is that which is the great evil.

Now, I do not agree with what the Governor said in his message to this general assembly, by any means, as to the reasons why or how we got in to this trouble, under the old constitution. It was not because, under the old constitution, they had different forms of government everywhere, but it was because it was so specifically held that each one of these great powers had to be granted by the charter. In that case I referred to *Collins v. Hatch*; that was a case in which a man's hogs were taken up for running at large and put in the pound and sold, and he tried and won that suit; he won that suit on this ground: That it

was not specifically stated in the charter of Conneaut that hogs should not run at large. That was the reason why the cities of the State had such a terrible time under the old constitution, and when they came to adopt the constitution of 1851 I think that the members of the convention fully recognized the principle, because they simply said in that that you should provide, not for the government, as had been done under the old constitution, but that you should provide for the organization of cities and incorporated villages, under a general law, and restrict their powers of taxation, assessment and the borrowing of money,—I think that is the way it all came about.

This is the first time in fifty years, in the state of Ohio, that the General Assembly has had an opportunity to say to the people of the State and of the different cities, "You shall have pure, local self-government," and if you don't give them that now they will never have it in the next hundred years; and I think that that is the fundamental principle; it is the thing that ought to be taught in all the schools, it ought to be taught at home, at every table—every child ought to know that there is a fundamental foundation upon which this whole Republic rests, town, state and municipal, under our form of government.

Mr. Metzger: I would like to ask Mr. Thurman a question: I think it is generally conceded, Mr. Thurman, that the present method of nominating candidates is unsatisfactory and inefficient. You have suggested here that there ought to be some primary election law in connection with this Code; what is your general idea about the primary election law?

Mr. Thurman: It is all embodied in a bill which I have given to Mr. Bracken to be introduced here next Friday.

Mr. Price: May I ask a question? Isn't the rule of construction of the charter of Conneaut that you spoke about, still the rule laid down in our law, as announced by the Supreme Court?

Mr. Thurman: Not in this last one, Mr. Price; but up to this last decision, I think so, yes.

Mr. Price: You said in your speech awhile ago, as I took it, that the rule of construction that the Courts had placed upon it, is, that powers not immediately conferred upon municipalities are withheld. Now, that is the rule of construction as it stands to-day, as I understand it; is that what you understand?

Mr. Thurman: I believe it is.

Mr. Price: Now, if that is the rule of construction, would you advise us to try to make, under the circumstances, a home rule provision, such as you spoke about now, when the decisions of the Supreme Court are staring us in the face, and say that that power must be specifically granted, or necessarily implied?

Mr. Thurman: If they have to be specifically granted, then it ought to be in as broad a way as it is possible to be done.

Mr. Price: Would you advise it?

Mr. Thurman: I would, for this simple reason; I do not believe that the Court would hold in the way in which it has heretofore. Now wait a moment and I will tell you why; do not laugh at this proposition until you hear the rest of it: After a long discussion in regard to these matters, I presented the thing to Judge Shauck and told him in as plain as I could, what I believed should be done, that these powers should be granted in as broad a way as possible, all of them granted in a lump, if possible, and I said, "Judge, the lawyers have all the time told me that that could not be done; can it be done?" "Why," he says, "of course it can."

Mr. Price: Well, now, Mr. Thurman, we are at considerable of a loss to know what the Supreme Court can —

Mr. Thurman: That is what we are, Mr. Price.

Mr. Price: But I don't believe that you quite appreciate our position; the question is this:—As members of the legislature, here, with that decision staring us in the face, already on the statute books and adopted by municipal law writers, such as Dillon and others, backed up as it is, by decision after decision, through a great many of the States, if we should not see fit to confer, as you say, absolute home rule, are we not justified in passing it?

Mr. Thurman: Surely.

Mr. Guerin: I have no more questions, but I desire to state that Judge Okey agreed with me last night to be here this morning to explain the principles of the Code which he drew, and which Mr. York introduced yesterday. He has failed to come this morning, and we are therefore without a further program, and the sub-committee recommends that the committee now recess, and that the committees appointed by the chairman yesterday organize and map out a line of work.

Mr. ———: I move that a recess now be taken.

Mr. ———: I second the motion.

The Chairman: It is moved and seconded that the Committee now recess. Before I put that motion, we will allow Mr. York to speak.

Mr. York: I wanted to say that this bill is not completed, and has not been read; it is on the line of this home rule proposition that Mr. Thurman has just been talking of, and there are some lawyers on this committee who would like a chance to study it. Now, it seems to me, if the committee will study this bill, with the decisions bearing on it, and after having read the bill and understood the principles of it, simply take an opportunity to present a brief, not only of one lawyer, but perhaps of a dozen good constitutional lawyers that we have in Ohio, bearing upon the constitutionality of this bill, it will simplify matters before the committee, and too, it will, I think, be followed up by a line of decisions from our Supreme Court that ought to get before this committee, and therefore I suggest that we give an opportunity on this bill to some parties that want to be heard. At present the constitutionality of it, I do not care so much about the general theory of it — that seems to be the main question we are now asking information on. I think an opportunity should be given and a time set to bear these briefs, and it would be quite an accommodation to, I think, dozens of people in this State who would like to be heard on that proposition; therefore, I simply ask an opportunity of hearing the lawyers who will present briefs, or we could have a four-hour special session on this question of home rule. Controversies are being raised about this bill of ours, when it has not been read and understood, and if that arrangement is made we will try to present here briefs covering fully the subject; but, gentlemen, it takes time to present a subject of that kind. There is no man, I do not care if he is a great lawyer — and we have many of them -- that would attempt to get up and discuss this question of the constitutionality of the bill, without an opportunity to prepare, because it takes time. That is Bill No. 9.

Mr. Painter: Can't we fix an hour?

The Chairman: That matter will be referred to the sub-committee at the request of Mr. York. There is now a motion pending.

Mr. Bracken: I would like to ask for information in reference to the committee: Isn't it the intention of this committee that all Codes, or parts of Codes, should be referred to these sub-committees, not the particular Code, but the parts of all Codes, pertaining to which that sub-committee was appointed?

Mr. Price: I think that it would probably impliedly permit them to consider that question in all its aspects, whether from the standpoint of any other Code introducing more light on the subject, in considering the full question.

The Chairman: I would consider it so.

Mr. Guerin: I do not desire to take up time here, but I want to say that my understanding was, that when the sub-committee was created we should map out a program, and in that program we should make an arrangement, at the earliest possible date, to have all of these Codes presented to this committee. Now, if one organization or another organization, or one person or another person, is going to upset the program, we cannot accomplish very much, and I want to say to the members of the committee that Judge Okey, the author of this bill, who claims to have spent much time on it, was notified several days ago that he would be heard last night. He did not come. I wrote him a letter, explaining how important it was that before we went any further in this matter for him to lay his Code before this committee, if he desired it to be considered. I sent that letter to his house by a special messenger. I saw him last night at half-past ten, and he said to me that the bill had not been printed, but that did not make any difference, he would come and present his view to the committee. He has not appeared this morning. All I want the committee to do is to stand by the sub-committee in the program. We will give them an opportunity to be heard, but they will have to take their time, so as not to disarrange the program adopted by this committee.

Mr. Bracken: Before the motion is put, I will say that I believe we all want all the time we can get upon this subject, and we want to have it understood that when they are prepared upon this subject, a date will be given them. Unless that is so understood, I will make a motion to that effect, but I do not suppose they will be denied an opportunity to be heard.

Mr. Guerin: That will be taken care of by the sub-committee.

Mr. Painter: Has Judge Okey given up coming this morning?

Mr. York: I do not know where he is; he may be dead for all I know. I do not know why he is not here.

Mr. ———: Then I think, Mr. Chairman, this motion to recess should be to some time when Mr. Okey can come.

Mr. Price: He told me last night that he desired that the Code be printed, and in the hands of the members, so that they could study it.

Mr. York: Now, that bill only consists of 20 or 25 pages; at the first glance it looks as though it is very small, but I know, as a matter of fact, that they would probably spend weeks and months, perhaps, in looking up the law on that bill.

Mr. Price: We will give him an opportunity to be heard.

Mr. York: I am satisfied that Judge Okey has been, for at least two or three weeks, putting in hard work on this matter, and he only just got in here by the skin of his teeth, by the kindness of this committee, and I rather expect, knowing it was not yet printed, he did not expect to be called upon so soon, and I would like to make this explanation for him in that respect.

The Chairman: The motion which is pending is to recess so that the sub-committees appointed may take up the work assigned them, and be ready to report to the general committee at some time in the future.

I hope the sub-committees will meet, organize and map out their work, and be ready to make suggestions and reports to this committee at as early a date as possible.

The motion to recess is before you.

The motion to recess was carried unanimously.

The committee recessed to meet at 2:00 P. M. of the same day.

75th General Assembly,
Extraordinary Session,
House of Representatives.

Columbus, Ohio, August 29, 1902.

The committee to consider the municipal codes met in the House of Representatives at 9:15 a. m.

On roll-call, the following members responded to their names:

Allen,	Comings,
Bracken,	Denman,
Chapman,	Guerin,
Cole,	Hypes,
Huffman,	Silverberg,
Metzger,	Thomas,
Maag,	Williams,
Painter,	Willis.
Stage,	

The minutes of the previous sessions of August 26th, 27th and 28th were read by the secretary. On suggestion of the chairman, the word "recess" was substituted for the word "adjourn" in reference to the noon recess, in the sessions of August 26th and 27th. With this correction, the minutes were adopted as read.

The chairman appointed a committee to revise and correct the printed records of the proceedings of the committee on municipal codes, composed of the following members:

Messrs. Metzger, Williams and Maag.

Mr. Metzger: Mr. Chairman, what is the committee?

The Chairman: A motion was made yesterday that a committee be appointed to revise and correct the proof of the printed proceedings of this committee.

Has the committee on program a report to make?

Mr. Guerin: I have no report to make, except to say that we are endeavoring now to get Mr. Wade Ellis here. We expect him to be here and discuss the Governor's code, and answer any questions of the members on the subject. He has promised to be here at 9:30 or 9:45, and I move, Mr. Chairman, that this committee now recess until Mr. Ellis arrives.

Mr. Denman: I second the motion.

The Chairman: It is moved and seconded that this committee recess until the arrival of Mr. Ellis.

Mr. Willis: The motion is not debatable, I presume, but I would like to suggest that this committee meet in the supreme court room, because the House meets in this room at 10:00 o'clock.

The Chairman: It is probable that the House will simply meet and adjourn.

Before the vote on the motion to recess, the chair wishes to announce that Mr. Willis has been appointed on the committee on program, to succeed Mr. Thomas, resigned.

The vote on the motion to recess was then called for, and the motion was unanimously carried.

10:10 A. M., August 29th, 1902.

Pursuant to recess, the committee was called to order by the chairman.

Mr. Willis was recognized by the chair.

Mr. Willis: Mr. Ellis is here, but has a cold and he asks to be excused from speaking at this time. I went over to see Mr. Longworth of the Senate, and he is engaged in important work and cannot leave.

The sessions of the committee to-day were set down for discussion of the code by the members, but I do not believe there is anyone here at this time who wants to discuss the subject, and for the purpose of getting the matter before the committee, I move ———

The Chairman: Just a moment, Mr. Willis. I will ask Mr. Guerin to report for the special committee on the program.

Mr. Guerin: The special committee has endeavored to get Mr. Wade Ellis here this morning, but he is somewhat indisposed and has asked to be excused. We asked Senator Longworth to speak, but the Senate is engaged in committee of the whole, and he cannot get away.

The program assigned to-day for discussion of the code by the members of the committee; but so far as I have been able to ascertain, the members are not prepared to speak this morning, and we are without a regular program. To bring this matter before the committee, I will make a motion that the committee now adjourn. — But first, I have another report. — I will withdraw the motion to adjourn, and say that we have a supplemental report to make.

The Chairman: The motion will be withdrawn.

Mr. Silverberg: Our program provides that we are to adjourn to-day until 10 o'clock next Thursday morning. I would amend that by moving that it be 4:00 o'clock Thursday afternoon, which will give an opportunity for all those members who would have to leave home on the early train, to reach here for the committee meeting.

Mr. Stage: I wish to say in regard to that matter that, while the House convenes at 4:00 p. m. on Thursday, the special committee on program has presented to this committee a schedule calling for 10:00 a. m. That has been published and it has gone all over the state, that on that day we have arranged to hear the mayors of cities and villages. If we do not meet until 4:00 p. m. of that day, it will push the program along and break up our entire arrangement of the program. It seems to me that members of the committee can be here on Thursday morning, even if they have to come on Wednesday night. It is important that we carry out the program.

Mr. Silverberg: I will amend my motion by saying 2:00 p. m. on Thursday.

Mr. Stage: That presents the same difficulty. It seems to me that in giving the whole day to the mayors of cities and villages, we are not giving them any too much time.

Mr. Metzger: Agreed.

Mr. Ainsworth: I second the amendment.

The Chairman: It is moved by Mr. Silverberg that the original motion be amended so that when this committee adjourns, it shall be to meet at 2:00 p. m. on Thursday. This is for discussion.

Mr. Willis: Mr. Chairman, it seems to me that the motion and the amendment thereto, should not prevail — ought not to prevail, for the reason that Mr. Stage has given. This program was made out and adopted by the committee, and it has been published in the newspapers of the state, and undoubtedly, the persons who are designated to appear before us on that day, will be here and expect a hearing. If we do not meet until 4:00 o'clock, we cannot meet at all that afternoon, because the House will be in session at that time. To adjourn to that hour will knock us out of two sessions of the committee, and that will disarrange the program clear through. I think the motion and the amendment ought to be voted down.

Mr. Silverberg: Mr. Willis states that we would lose two sessions of the committee: we would only lose one session of two hours, if my

amendment is carried. I am almost positive that you will not have a quorum here at 10 o'clock Thursday morning, from what I have heard the members say. The speakers who are invited to be here, would only lose two hours' time, which would not be of much consequence to them, but would be a great accommodation to the members.

Mr. Thomas: While this committee may adjourn until next Thursday, it strikes me that there is work for the members of the committee to do here, and that they ought to be here before next Thursday. This committee has appointed five or six sub-committees in relation to different features of the code. The members of those committees, I believe, are expected to put in their time looking up and studying the different features assigned to them, and be prepared in their departments. I do not think the members of this committee ought to go home and simply stay there until next Thursday morning, but I think they ought to be studying and preparing on this subject, and be here next Thursday morning ready to go ahead with the work and be prepared to make reports as to their different features. If we do not do that, I believe we are going to waste a lot of time here.

I think the motion ought not to prevail; I think the members of these sub-committees ought to be here this week and next week, ready to carry on this work and get through with it as soon as possible.

Mr. Metzger: I hope this motion will not prevail. It is almost a week until this committee meets again, and I do not see any reason why every member cannot be here for the session Thursday morning. It seems to me that this program, gotten out by the special committee and adopted by the general committee, ought not to be disarranged.

The amendment to the original motion, upon vote, was declared lost.

The Chairman: The question is now upon the original motion.

Mr. Denman: I want to ask for information: Is it a fact that our program provides for a morning session Thursday?

The Chairman: It does.

Mr. Denman: Then, Mr. Chairman, I certainly think that motion ought not to prevail. We have laid out a program and I think it is our duty to be here and attend to the work. I am perfectly willing, and it is my desire to come back here Wednesday night. If we begin to defer the work we have laid out by deferring the work of the first day's session next week, we will no doubt find ourselves, in many instances, deferring it further, and we will be here five or six or eight weeks. I think we

should stand by this program, and that we should attend to this work; it is a duty; we have been appointed for that purpose, and we ought to be here on Thursday morning. If there is not a quorum, let us hear the speakers who come, and let it be known to all the state that we are here to carry out the work. I am willing to come.

Mr. Silverberg: I don't think that this motion will receive one vote, but the previous speaker laid great stress upon carrying out the program. Thus far, we have failed to do so. We were to have a session last night, and we didn't have any; consequently, we have already been varying the program.

Mr. Denman: That is just the trouble, and that is the reason I think we ought to call a halt.

Mr. Stage: In all the sessions of this committee, beginning on September 4th, there are other parties on our program, which was not the case last night, or this morning; at these two sessions no one is discommoded but the members of the committee.

The original motion to adjourn to meet Thursday of next week at 4:00 P. M. was put to vote and declared lost.

The Chairman: That brings us back to the original program as outlined by the special committee. Is the chairman, Mr. Guerin, ready to report?

Mr. Guerin: Mr. Chairman, I have the report ready to submit.

REPORT OF THE SPECIAL COMMITTEE OF THE HOUSE OF
REPRESENTATIVES, APPOINTED TO CONSIDER THE
MUNICIPAL CODES.

COLUMBUS, OHIO, August 29, 1902.

"To the Special Committee on Municipal Codes of the House of Representatives of the Seventy-fifth General Assembly:

"Your sub-Committee on Program begs leave to submit the following report:

"The committee will sit upon the days hereinafter set forth, for the purpose of hearing from the persons and organizations hereinafter mentioned.

THURSDAY, SEPTEMBER 4TH.

10:00 to 12:00 A. M.	} Mayors of Cities and Villages.
2:00 to 5:00 P. M.	
7:30 to 9:30 P. M.	

Proceedings on Municipal Code.

FRIDAY, SEPTEMBER 5TH.

9:00 to 12:00 A. M.	}	City and Village Solicitors and the Representatives of the Legal Departments of Municipalities.
2:00 to 5:00 P. M.		
7:30 to 9:30 P. M.		

MONDAY, SEPTEMBER 8TH.

9:00 to 12:00 A. M.	}	Representatives of Boards of Health and Library Boards.
2:00 to 5:00 P. M.		
7:30 to 9:30 P. M.		Board of Public Improvement, Charities and Correction.

TUESDAY, SEPTEMBER 9TH.

9:00 to 12:00 A. M.	}	Boards and Chamber of Commerce, Municipal Associations, Builders' Exchanges and Taxation Commissions.
2:00 to 5:00 P. M.		
7:30 to 9:30 P. M.		On the subject of taxation and the general principle of Municipal Government.

WEDNESDAY, SEPTEMBER 10TH.

9:00 to 12:00 A. M.	}	Hearings of all persons interested in the discussion of franchises and the granting and renewal of the same.
2:00 to 5:30 P. M.		
7:30 to 9:30 P. M.		

THURSDAY, SEPTEMBER 11TH.

9:00 to 12:00 A. M.	}	Representatives of City and Village Councils and Municipal League.
2:00 to 5:00 P. M.		
7:30 to 9:30 P. M.		

FRIDAY, SEPTEMBER 12TH.

9:00 to 12:00 A. M.	}	Representatives of Labor Organizations and discussion of the Merit System.
2:00 to 5:00 P. M.		
7:30 to 9:30 P. M.		

"The committee desires, if possible, that the public hearings before the committee be closed on Friday, September 12th, 1902.

"The committee, nevertheless, invite any citizen of the state of Ohio, or any organization which desires to be heard upon any question affected by the Code to be adopted by the legislature for the municipal government

of the cities and villages of the State of Ohio, to correspond with the chairman of this committee, and ample opportunity will be given, after September 12th, 1902, to such person, or organization, for one or more hearings."

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The Chairman: You have heard the reading of the report of the Special Committee.

Mr. Guerin: I move the adoption of the report.

Mr. Denman: I second the motion.

The motion for the adoption of the report was put to vote, and prevailed, unanimously.

The Chairman: Is there any further business to come before the committee this morning?

Mr. Stage: I would like to suggest, as there are some representatives of the press here, that they be given copies of this report of the special committee.

The Chairman: That suggestion is well made. I hope the members of the press will accept the suggestion and give the report of the committee as wide a circulation as possible.

Is there any further business.

The Chair would ask that the suggestion made by one of the members of the committee this morning, in the discussion on the motion to adjourn, be taken very carefully under consideration, and that the chairmen, especially of the sub-committees, be looking very carefully over their work, the work laid out for the sub-committees, and just as soon as possible be ready to offer something to the general committee. I think that is very important. This work, I think the members of the committee will find, grows upon them; the magnitude, the scope of the work is far greater than any of you apprehended when you first began to study it; I sometimes think the longer we study it, the less we know about it. I hope the members of the sub-committee will go carefully into their divisions of the work assigned them, and that every committee will be ready to report at just as early a date as possible.

On motion, the committee adjourned to meet Thursday, September 4th, at 10:00 o'clock A. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

AUGUST 27TH.

AFTERNOON SESSION — 2 P. M.

Meeting called to order by the chairman.

Present: Comings, Painter, Guerin, Price, Cole, Williams, Metzger, Thomas Chapman, Allen Silberberg, Worthington, Denman, Hypes, Willis, Gear, Stage, Bracken, Ainsworth, Maag, Huffman, Brumbaugh, Sharp.

Mr. Guerin: Mr. Chairman, I desire to submit the report of the sub-committee.

Mr. Comings: The committee will listen to the report of the sub-Committee on Procedure of Business.

SPECIAL COMMITTEE OF THE HOUSE OF REPRESENTATIVES, APPOINTED FOR THE CONSIDERATION OF MUNICIPAL CODES.

Gentlemen—Your sub-committee beg leave to submit the following report for the procedure of the committee at its various meetings to be held.

Rules of Procedure for the Special Committee on Municipal Codes of the House of Representatives—75th General Assembly.

1. Roll call of members of committee.
2. Reading of the minutes of the preceding meeting.
3. Program of the day.
4. General discussion by members of the committee.
5. Selection of subject for next general discussion by committee.

No member shall at any time be allowed to speak upon any question except the question under consideration by the committee, nor at any time except the time set aside for the informal discussion of such question by members of the committee, and at such informal discussion no member shall speak more than once, nor longer than five minutes.

Any member may ask one or more questions of the speaker participating in the discussion of the question under consideration.

Providing, however, that no member shall speak nor ask any question without first obtaining the recognition of the chairman of the committee presiding at such meeting.

These rules shall not be modified nor suspended except by a two-thirds vote of all the members of the committee.

The rules of the House of Representatives of the 75th General Assembly of Ohio, so far as applicable and not in conflict with the rules above set forth, shall be the rules of this special committee.

Respectfully submitted,

W. E. GUERIN,
G. T. THOMAS,
U. G. DENMAN,
CHAS. W. STAGE.

Committee.

M. Guerin: I desire to say in explanation of this matter that the sub-committee, at a meeting this morning, decided that if we were to do any business of any nature whatsoever we would have to follow the most strict parliamentary rules. Our idea is that when a man is speaking upon any subject any member of this committee, by obtaining the recognition of the chair, can ask any pertinent question. Take in general discussion of any subject that has been assigned by it to be discussed by the committee, the sub-committee will assign any members who desire to be heard or that have made a study of the subject, limiting their time. After that discussion by these members who are assigned, the member of the committee at large will be privileged to rise and present their views, but not to consume more than five minutes or speak more than once. That may seem a short time and may seem a little harsh, but in a committee of twenty-three if we give only five minutes you will see what time we will consume. We have been very careful in the preparation of this program, and I sincerely hope it will be adopted, believing if it is we will be able to accomplish something, and if we are free and easy in the end we will accomplish nothing thereby.

It is moved and seconded that the report be adopted. The motion was carried.

Mr. Willis: I am heartily in favor of that motion. I simply want to call attention to the part reading "The rules of the 75th General Assembly." The senate has one class of rules and the house another. I presume the rules of the House of Representatives are the ones in-

tended. I move that this amendment be made. The motion is seconded and carried.

Mr. Silberberg: I move you now that twenty-three copies of these rules as acted upon by the committee be distributed among this committee.

This motion is seconded and carried.

Mr. Cole: I wish to make the following motion:

"Resolved, That the Chair be authorized to divide the Code into as many divisions as he may deem proper, and appoint a sub-committee of three or five, at his discretion who, shall make a special study of that part of the Code, and report to the committee the result of their investigations."

This motion seconded and carried.

Mr. Comings: I wish you would name a vice-chairman of your proceedings for this motion just carried will necessitate a little consideration. I am anxious that these sub-committees be gotten into the paper as soon as possible, and I would like a few minutes to look this up.

Mr. Willis is named by Mr. Guerin and his election is carried.

Mr. Comings: Mr. Willis will act as vice-chairman. I expected this movement would be made and I have very briefly made the following divisions, and if satisfactory to the committee I will retire a few minutes and name the members in these lists. If there is anything not meeting its approval I hope they will be free to criticize and offer amendments. I appreciate that of necessity some of these will conflict, that there is such as Board of Public Service and Terms of Office that may seem to conflict; yet I think they can be taken up separately and considered by themselves. I have Board of Public Service, Board of Public Safety, Repeals, Legislative and Judiciary, Taxation and Assessments, Villages, Organization of Cities and Villages and Terms of Office of Officials, also Health Department—if that seems to cover the ground, and I think it does, and seems satisfactory to the whole committee.

Mr. Chapman: Did you read the subject of assessments?

Mr. Comings: I did.

Mr. Willis then took charge of the meeting.

Mr. Willis: I understand the purpose of the meeting as arranged by the Subdivision on Program, is the discussion of the code by Mr. Wade Ellis: I have the pleasure of introducing one of the gentlemen who had much to do with the formulation of the code.

Mr. Ellis: Gentlemen of the Committee: I doubt if at any time in the history of this state, since the assembling of the constitutional

convention in 1851, there has devolved upon its citizens and their representatives so important a task as that which now confronts you. A task of such magnitude ought to be met by big men in a big-hearted and big-minded way. I congratulate you upon the manner in which you have started upon this stupendous undertaking. I am glad that the House of Representatives has appointed a committee so representative of its character and of its best talent in both parties, and that you have entered upon this work with the determination to examine this question from the beginning to the end, to discuss it openly, conscientiously, publicly, and to give the very fullest hearing to every interest that may be concerned. I don't believe in railroading any bill, and I particularly do not believe in any procedure, no matter if it be at the expense of considerable delay, that will cause any one to feel, in the state of Ohio, that he has not had an opportunity to be fully heard upon this important measure. No matter how long it takes, no matter what labor it involves, better that you should be here until Christmas and get a right code than that you should adjourn next Monday and get a wrong one. And I want to say that so far as the humble part that I have played in preparing this bill which has already been introduced, and which is known as the Governor's" bill, that if there is any line in it, or any sentence in it that cannot bear the fullest discussion, the fullest investigation, that cannot have turned upon it the bright light of day, I want it pointed out and discussed to the fullest extent.

At the outset permit me to say, gentlemen of the committee, some of the things that those who have prepared the Governor's bill have not attempted to do. We have not attempted to devise any novel plan for the government of Ohio municipalities. In some respects it is incorrect to call the work and the results a code at all. What it might more properly be called is a re-adjustment of municipal law to fit the present conditions. It is a readjustment of the present law very largely, and a readjustment along familiar lines. There has been no attempt to interject anything novel into it, to take up with any new fad, or even some valuable and very proper reforms; but what has been attempted to be done and what in my judgment it is the duty of you and the legislature to do is to pass such a bill as will adjust the laws with respect to municipalities now familiar to the people of the municipalities throughout the state. Every city in Ohio and every village in Ohio will have applied to it the best that is applied to any city and to any village in

the state of Ohio. If you can accomplish that you will have answered the call, the appeal, you will have done a very proper and very full work.

It is not, as I said the other day at Sandusky, any slow insidious disease that has attacked the municipalities of this state. They have been run over with enactments. What they need is not some new experiment, not some novel nostrum to try; but what is needed is lint and bandages, a hurry call for an ambulance as aid for the wounded. When one is stricken down with a broken limb or a severed artery a doctor is called to bind up the wounds or set the leg; we would not think much of the judgment or discretion of that doctor if he stopped in the proceedings to remove a wart from the nose of the patient. The thing that is needed, the thing that has been attempted to fit this emergency has been the application of the laws already very largely in force and familiar to the people in the state, so that they may apply with equal force and uniformity to all the municipalities of the commonwealth. The governor's bill has attempted, those drafting it have attempted, to accomplish three things. In the first place the re-adjusting of existing laws; and in the next place the separation more clearly than they have ever been separated before of the executive, the judicial and the legislative powers of the municipality. Third, the attempt to raise the standard of the legislative bodies in the municipalities so that with greater comfort and greater confidence the people hereafter can trust the renewed and enlarged responsibilities which you must give to councils of those bodies.

I don't know how I can better aid the committee in any way than to take up some of the provisions of this bill in their order.

All municipal corporations are divided into cities or villages. There has been no attempt to provide for any other classification. We have taken the very broad hint of the Supreme Court that the constitutional classification is perhaps the only one they will sustain. Heretofore where there has been classification of cities under the old plan, under which special acts were passed, it was possible for municipalities, upon their own motion, to advance to a particular grade or class; in other words, the act creating grades and classes did not operate automatically. It required something on the part of the municipality itself before the village or city could advance. An objection was made to that in the recent case decided by the Supreme Court. We have therefore provided that all municipalities be divided into two classes, cities and villages, a village becoming a city not by action of its council, not by a legal pro-

ceeding, but by force of law itself, so that it won't be possible for a community now constituted a village to hereafter escape the obligations and responsibilities of a city, if a sufficient number of inhabitants are located in that village, by declining or neglecting to take the necessary steps to become a city. The result of permitting such local action, as the committee will readily see, would be to bring us back to the same condition of classification, to a less degree, than we are now confronted with today. Therefore in Section 2 of the act I call your attention to the fact that it is necessary that a federal census, officially made known to the secretary of state, after which a proclamation, etc., etc., is the necessary preceding step for the advancing of a village to a city. After that is once done the village becomes a city by operation of the act itself, and not by any proceedings taken in the municipality itself.

With respect to the general powers granted all the municipalities.—The bill before you largely re-enacts the old familiar section 1792, and it re-enacts it in the form and the language, as far as possible, that is used in that section. You can readily see and appreciate the purpose, because that language had been construed by the courts of the state, and the people had become familiar with the powers of 1692 as the courts have discovered and pointed out their meaning. Therefore in re-enacting 1692 we have largely used the language employed, in addition to that from other sections of the statutes, or we have compiled various other powers which originally did not come under 1692 but which are found elsewhere through Volume 1 or Volume 2 in the statutes, and we have put these powers under the general powers of municipalities, and at the same time a number of sections, as you will observe by section 8 of this act, a number of sections in harmony with this act where certain powers have been granted, largely the powers acquired to license, etc., have been re-incorporated in this act without a re-enactment.

A, special subdivision has been called "Special Powers" which will be found on page 8 under section 9. That phrase is used because it is necessary that the special powers conferred—the particular powers granted to the municipalities in these various instances should be more fully described and defined with their limitations, etc., and the manner of their exercise should be more carefully pointed out. For that reason there have been what could be called chapters. 1st. Power to appropriate property for public purposes. That division of the bill re-enacts practically the present laws with respect to the appropriation of property, removing any special characteristics from them and giving them uniform

operation and very greatly shortening the chapter. The second special power is to sell or lease public property. In the present laws in respect to sale or lease of public property by municipal corporations you will observe when you come to examine the question that it is necessary that before a sale or lease of public property shall be made there shall be a concurrence of what is known as board of improvements and where there is no such board certain other proceedings shall be taken. In other words the present laws with reference to public property are special in their nature and therefore they ought to be supplanted by an act cutting out these special characteristics, making them uniform throughout the state.

The third special power is to regulate the use of the streets. The old well-known section of the Statute 2640 which gave to the council of the municipalities the care and supervision and control of the streets which had been construed by the courts for thirty-five or forty years and the meaning of which is now well known to every lawyer and every intelligent layman in the state, is practically re-enacted. Under it there naturally comes the granting of the use of the streets to public service corporations. With respect to these provisions we have attempted to do nothing more than to group the subject of the granting of what are called municipal franchises to street railway companies, gas companies, telephone, electric light and all the various other classes of quasi-public corporations and supply one method for the acquirement of that privilege and one method got accountability to the city and village for the privilege acquired. We have not attempted to do anything new in this respect except as it was necessary to make the law with respect to one kind of public service corporation apply to all kinds of public service corporations. And in no other respect are the present laws upon this subject changed. This is a matter of great concern. The suggestions here are largely tentative, as most of the suggestions are, but what the legislature may do on that subject is another matter and will very largely engage your closest scrutiny and attention; but at any rate you have before you here the laws on the subject of municipal franchises grouped in one section, or one subdivision, and whatever improvements you desire to make can be made.

Mr. Price: Mr. Ellis, is there any inconsistency between sections 28 and 93 of this code?

Mr. Ellis: My attention has once before been called to what has been thought to be an inconsistency between section 28 and section 93.

I think I can explain to the committee, and to you, Mr. Price, that the supposed inconsistency does not exist. Section 28, as you will observe, provides that "In all municipal corporations council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges and viaducts within the corporation and shall cause the same to be kept open and in repair and free from nuisance; and with respect to the dedication, opening and vacation of streets as well as labor upon them. Section 93 provides that the board of public service shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wharves, docks, landings, market-houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship-channels, streams and water courses; the lighting, sprinkling and cleaning of all public places, and the construction of all public works." Now the difference is just this. The legislative body of the city which grants franchises which performs all legislative functions and powers granted to any city, has general control over the street as it has over all municipal property. When it comes to work upon the street—when it comes to improvements or repairs of the street, the board of public service, which is the legislative department, does that work and supervises those improvements and repairs. It is the same distinction that is between the owner of a building about to be constructed and the superintendent or architect who is in charge of the construction. More than that, section 2640 as herein directly re-enacted in this section 28 of the bill reads in exactly the same language. It declares that council shall have care, supervision and control of the street and yet wherever there is a special act creating a board of public improvement, board of public works, board of public service or any similar department, those departments are now given power to manage, supervise and repair the street. These statutes have been in operation for a great number of years, and no trouble has ever arisen by any supposed inconsistency. I think it will be made plain when you understand that while council as the legislative body has control of the streets, as it has of all other property of the municipality, simply managing and supervising the improvement of the streets, and I think there will be no danger of any inconsistency or that there will be any confusion or trouble about their operation.

The next power is to levy and collect tax—section 37. This is the most important power conferred upon any municipality, and I want to read section 37. "The council of every municipal corporation shall have power to levy and collect taxes upon all the real and personal property

within the corporation for the purpose of paying the expenses of the corporation, constructing all improvements authorized, and exercising all the general and special powers conferred by law." Section 38 puts a limit upon all taxes levied that is authorized by the act. The limitation is a part, as members of the committee know, of the Constitution. Section 39 authorizes a greater tax than that authorized by section 38, where there is a vote of the people—a two-thirds vote, who are in favor of the proposition. Then there follows a general method by which taxes are levied and appropriations are made. On the first Monday in March of each year the heads of the various departments in each municipality are required to report their needs for the ensuing year to the auditor or clerk of the corporation. On the first Monday of April, on or before that date, the auditor or clerk submits those recommendations. Then council either examines these recommendations and tax levies suggested by the auditor or clerk and the council then in the exercise of its legislative functions as a taxing power and authority for the municipality determines what the tax shall be and what the levy shall be for municipal purposes. They make the levy and certify it to the county auditor; the taxes are then collected as other taxes by the county auditor. At the beginning of each half of the fiscal year, that is to say, beginning early in January and again early in July, council makes what are known as semi-annual appropriations, and within these appropriations the money raised by taxation for that year are expended. Every possible safe-guard that could be found or suggested has been incorporated in this provision with respect to the raising of taxes, making of appropriations and the expending of money for municipal purposes.

I call your attention to one provision which is new and which was made at the suggestion of the Governor, and which, I believe, upon examination, you will find a very wholesome section—that is section 47. (Here reads section 47.) "The auditor or clerk, and the treasurer of every municipal corporation shall make up a weekly statement of the balance in all funds and accounts in their offices, as the same exist at the close of business on Saturday, and such officers shall forthwith compare such statements, correct any errors in them, and at once forward a copy of the same to the mayor, who shall keep them for public inspection." So that every week there will be known to every citizen of the municipality by the public documents and public records in the office of the mayor, compiled by the officers of the corporation exactly where the corporation stands financially; exactly how much money it has on hand, what are

the various funds, what has been used, what has been expended and what has been left—a weekly accounting for the benefit of every taxpayer in the municipality.

Line 552 provides as follows: "The limitations and restrictions imposed upon all municipal corporations in the state by sections 2699 and 2702, Revised Statutes, shall be and remain in full force and effect." Those are the Burns and Worthington laws, and yet by some typographical error I discovered last night that 2699 and 2702 are contained among the statutes repealed. It seems that those who set up these repeals have got so in the habit of running from one number to the next number in sequence that they forgot to skip the very wholesome provisions of the Burns and Worthing laws, page 73 (lines 1864 and 1865). It seems to me it points out the importance of a very careful examination of these repeals, because, in one sense they are the most important parts of the bill.

The fifth of the special powers enumerated is the power to levy and collect special assessments. As every one knows who has examined the assessment laws of the state, or had anything to do with their construction, that they are in every sense special. Scarcely two cities in the state, or any two municipal corporations in the state, operate under the same assessment law. In some municipalities a petition is required, in other municipalities 25 per cent. of the market value of the property before the improvement is made, in other municipalities 25 per cent. after the improvement is made, in others with respect to the revenues and taxes, and it is assessed by the front foot, the abutting foot, and in others according to the valuation. The assessment laws today comprise about 210 pages of the Revised Statutes. A good illustration of what may be done by elimination or classification is shown by the fact that the complete system of assessments, taking the place of two hundred and ten pages of the assessment laws today is put into two pages and one-half of this bill. The method determined upon, here suggested by this measure "The council of any municipal corporation may assess upon the abutting and adjacent and contiguous or other specially benefitted lots and lands in the corporation, by a percentage of the tax value thereof, any part of the entire cost of, etc., and so on * * * but in no case shall there be levied upon any lot or parcel of land in the corporation, any assessment or assessments for any or all purposes within a period of five years, exceeding 25 per cent. of the tax value thereof." The result of that will be, I believe, to entirely make unnecessary any suit involving the validity of assessments. I believe that all such litigation in the future will be

avoided. The principal class of suits that now arise with respect to assessments are those in which the property owner disputes the validity of the assessment on the ground that it takes more than twenty-five per cent. of the property. The consequences have been that municipalities all over the state, when this kind of suits have arisen, have tried in court as to how much the property is worth, and property owners have been put to the expense of subpoenaing real estate experts and employing attorneys, etc., to determine the value beyond the amount allowed by law; but there can never be any dispute about the tax value of the property with that on the books. Anybody can see the levy by the percentage of the tax value of the property, and limited to twenty-five per cent. of the value of the property, and will know in advance what the burden imposed will be, and beyond the legal limit it won't go because it can't go.

Mr. Price: Suppose I live on a newly opened street and had a house and Mr. Painter owned a lot adjacent and did not build a house on the lot. Would the improvements be taken into consideration in that valuation?

Mr. Ellis: Certainly, that is the present law. In some localities it operates by the abutting foot front, some according to benefits, and various methods.

Mr. Price: Where the lots are of the same depth that would place heavier burden on my property, if he built a house subsequently.

Mr. Ellis: If by abutting foot front it would, but by valuation it would not.

Mr. Price: It would place a burden upon the man who improves his property and the other man would get out.

Mr. Ellis: Certainly the law today provides that a man who has a hundred thousand dollars in property is taxed more than the one who has a thousand dollars in property.

Mr. Worthington: As I understand, if you are going to have a street improvement and your lot is valued at one hundred dollars you could not assess to exceed twenty-five dollars; then what is meant by "In all cases of assessments council shall have regard to the benefits conferred by the improvement, and shall limit said assessments to the special benefits conferred upon each of the several lots or parcels of land assessed?"

Mr. Ellis: It means this, that while the limit of an assessment upon any piece of property in any event, whatever the benefit to the property may be, shall not exceed twenty-five per cent. of the tax value, yet if it

only amounts to ten per cent. of the tax value and yet if the property is not benefited to the value of ten per cent., ten per cent. cannot be levied. The Supreme Court has held that you cannot assess beyond the benefits.

The sixth Special Power conferred is that called the power to borrow money, and in this subdivision of the act the present laws are largely re-enacted, except that what is known as the Longworth bill, passed by the regular session of the present general assembly, has been re-enacted and made to continue in full force and effect, that municipalities may borrow money for the purposes enumerated in that act, either by resorting to a vote of the people or within the limitations of that act without the vote of the people, and in no other respect are the general laws with respect to borrowing money changed.

The seventh Special Power is to protect and maintain a sinking fund. In this respect the act merely attempts to re-adjust the present sinking fund statutes and to make it apply to the small villages in the state. The sinking fund trustees provided for in cities are to be composed of four citizens, no more than two of whom shall belong to the same political party, who shall be appointed by the mayor. In villages the sinking fund board is to consist of the mayor, clerk, and the chairman of the finance committee of the council. This is done in order to prevent another board for a village where it can be avoided.

I want to call your attention to the question of the organization of cities. Sec. 27. We have provided for council, mayor, president of council, auditor, treasurer, board of public service, board of public safety and city solicitor. Now first in respect to this organization in general. I do not believe you will find, after an examination of the question, that there is in any city in Ohio that has to-day as few boards or as few officers as are provided in this organization. I don't believe you will find upon investigation that any village or any municipality now enjoying the village form of government which might become a city by the operation of this act, will have as many boards or as many officers as it has to-day. At this point I want to make two suggestions for the benefit of those who feel that village municipalities that are now enjoying the village form of government might object to the organization, particularly because it might give them in one case a board of public safety which they say is unnecessary, and would give them a separate police officer, judge of police court, instead of having this duty performed by the mayor. I have a private opinion about this bill * * *

it can be amended to its advantage and benefit in a great many things. I want suggest one amendment now, for the benefit of your committee. Every village and every city is familiar with the board of health. Every municipal corporation in the state, or nearly every one, has one. Now I suggest that since the board of public service, by this act, has a great multitude of powers conferred upon it, and among them is constituted the board of health, that the duties of the board of health be transferred from the board of public service and placed where in my opinion they more properly belong—to the board of public safety. They have charge of the police and of the fire department. They have, therefore the protection of life and property, and it is proper they should have the protection of the public health. When this is done you will not have the anomaly of having in small cities four members of a board of public safety whose only duties are to watch the police and fire department, but they will have charge of the public health and you can justify the expense of this board and at the same time you relieve the board of public service from duties which are not in harmony with their other duties, and have a board of public safety with the duties which are entirely in harmony.

It is suggested that in the smaller cities it ought not to be necessary to have a judge of police court and a clerk of police court. Cities of five thousand inhabitants are now used to having the functions of police judge exercised by the mayor. I don't see any objection to this amendment, providing that in respect to cities, when you come to the judicial section of the bill with respect to other cities, that the mayor of the city may be eligible to the duties of judge of police court and the auditor may be eligible to the duties of the clerk of the police court. Thereby you avoid the necessity of electing such officer in the smaller cities and in the larger cities you can elect the mayor and the judge of police court, as convenient.

Mr. Comings: You consider that as strictly constitutional?

Mr. Ellis: I should not suggest it if I did not.

Mr. Comings: Is there not something in the statutes to-day which provides against certain officials holding two elective offices—nothing in the constitution?

Mr. Ellis: Nothing that would prevent so far as I am able to judge.

Mr. Comings: Would that in any way come in conflict?

Mr. Ellis: I suppose it would not with the present election laws.

Mr. Comings: I think not.

Mr. Price: I notice that you provide for one police judge and then in cities above certain population they may have two. How do you make that consistent other than classification?

Mr. Ellis: You mean how is it consistent with the abolishment of classification?

Mr. Price: Yes.

Mr. Ellis: It is not, but so far as courts are concerned they are not properly a part of the municipal organization. The constitution provides for a different method for the direction of judicial districts and empowers the legislature to create as many judicial districts as it chooses, and to have in each district as many judges as it chooses, by a direct specific grant of power of the constitution. Therefore while we may presume it is forbidden to classify cities, it is not forbidden to grant a greater number of judges in one district than in another, because the constitution in a specific grant of power has authorized that. The constitution has granted it and the supreme court has held it.

Mr. Price: Did they reverse themselves on that too?

Mr. Ellis: They did not reverse themselves; but I think the constitution is broad and clear.

Mr. Cole: Police judge and the mayor are both elected to office. If you combine these two offices in one person would you place the same name on the same ticket for the police judge and also for the mayor?

Mr. Ellis: I haven't worked that out, Mr. Cole; but the suggestion that comes to me now is that it would be practical, but there is no constitutional objection.

Mr. Stage: Have the framers of the code contemplated the possibilities of a layman being elected a police judge. So far as I can see there is no qualification for practicing lawyer or otherwise.

Mr. Ellis: I am quite sure that we did not intend the judge of police court to be an attorney. The court in Cleveland held, not very long ago, that where a judge of the common pleas court had been disbarred, and therefore could not practice law at all, he was eligible to sit on the city bench.

Going back now, gentlemen, to the department under organization of cities, I want to call your attention to section 72. "The legislative power of every city shall be vested in, and exercised by a council, composed of not less than seven members, four of whom shall be elected by wards, and three of whom shall be elected by the electors of the city at large. Provided, that for the first twenty thousand inhabitants in

any city, in addition to the original five thousand, there shall be two additional members of council, elected by wards, and for every fifteen thousand inhabitants thereafter there shall be one additional member similarly elected; provided; further, that whenever the total number of members of council is fifteen or more, one member of every five shall be elected at large, and the remainder from wards. Members of council shall serve for a term of three years and until their successors are elected and qualified." I don't know whether any explanation of that is desired or not, but what is intended to be done is this. Every city starts out with the minimum council of seven members, four of whom are elected by wards and three by the city at large. For the first twenty thousand inhabitants over and above the five thousand required to make the municipality a city, two additional members of the council are permitted, so that when you have a city of twenty-five thousand inhabitants you have nine members of the council, three elected at large and six by wards. When you have a city of forty thousand you have ten members of the council, three elected at large and seven by wards. When you have twenty members of the council, by that rule, you will have four elected at large and the balance by wards. Now any man can figure out for himself the effect of this provision upon his own municipality. In the larger cities of the state, for instance the city of Cincinnati, twenty-four members of council elected by wards, six at large; in Cleveland—I don't know just how it is worked—but in Cleveland it is about the same.

Mr. Price: What is the propriety of making the residence five years in the state to be a councilman—what is the object in that—all the municipal officers have to have a residence in the state for five years.

Mr. Ellis: In the municipality I think it is.

Mr. Price: Yes.

Mr. Ellis: There is no object except to secure by that method that class and character of men who have become identified with the municipality, and who are not new-comers, and who are not liable to go out again—not mere transients—men who have made that their home and expect to stay there. My experience has been that it is better to have men in office who for sometime have been identified with the municipality.

Mr. Allen: In section 76—in regard to residence of councilmen. "Councilmen at large shall have resided in their respective cities, and councilmen from wards shall have resided in their respective wards, for

at least one year next preceding their election, and shall have been citizens of the state at least five years before said time." I would like to ask you whether a man would be required to live in a state five years in order to be an officer?

Mr. Ellis: Perhaps that ought to be "residents" of the state for at least five years instead of "citizens;" but there is no constitutional objection to that. If you can require that a man has been an elector for five years next preceding his introduction into any office. There is no difference between saying that than saying he has been an elector. Our statutes constantly require something more than a mere elector. Our statutes constantly require that a man shall not only be an elector but a resident for a certain time. The office you hold as a representative—the qualifications are not only that you must be an elector, but an elector and a certain age. There is no impropriety or anything unconstitutional in providing that a member of the council shall be an elector and shall have been a resident of the state or citizen for five years. I don't see any difficulty in that.

Mr. Price: I think it is too long.

Mr. Ellis: It may be and maybe it ought to be two years.

Mr. Gear: Why should that limit the election of a councilman to one having a residence of one year in his respective ward. A married man could move the same day and become an elector in the next ward. He can move from one township to another and be an elector of that township. Why limit that he should be an elector of that particular ward for one year. Would that be reasonable? He should be an elector of the municipality one year to give him legal title.

Mr. Ellis: The same consideration would require that one should be an elector of the city for a specific time. That is, that he should acquire a neighborhood interest and should have been there for some time. If a year seems too long that is a matter you can remedy. It does seem to me that is long, but it is a matter of mere moment whether it is a year or six months. You can easily be able to find good men and those who have been living in the neighborhood for a year and know its needs and what it wants.

Mr. Gear: The question is—a man might be a resident of a city or village and might live upon a street which street was the ward line, and he might know more of the wants of the people living in the ward opposite or adjacent to his more than he did the wants of his own ward, and if he should have property and he should move into the

ward, and would not be moved for a year when perhaps he would be the choice and he would have to come up and be a councilman at large.

Mr. Ellis: There is nothing new in this act or unfamiliar with respect to the powers of the mayor. The mayor is given the general powers now conferred by law in the section named. A new office, to be called "president of the council" is provided. It was thought there ought to be a vice-mayor in every municipality. I know from our experience in Cincinnati and from the experience of others in every part of the state with whom I have talked, that a great deal of confusion has frequently arisen because of the doubt of who was at the head of the municipality in the absence of the mayor, and how the balance of his term should be filled upon his death or resignation. To answer this want we provided this office of president of council. He occupies towards the municipality something the same relation that the lieutenant governor does towards the state. He presides over council. He has no vote except in case of a tie. He is the acting mayor whenever the mayor for any reason is unable to serve. He succeeds the mayor in case of death or resignation of the mayor, or his removal.

In this connection I want to call your attention to the general subject of unexpired terms — and another thing this accomplished—it avoids the necessity of special elections to fill unexpired terms; and in my judgment one of the best things suggested in the governor's proposed measure is that special elections to fill vacancies for unexpired terms are done away with. They are expensive to the municipality. Where the succession is clear, where you can put your hands exactly on the man who will take his place, it seems to me that special elections should be abolished, and with respect to the mayor's office that is accomplished: and with respect to every office you will find the methods of filling vacancies without resorting to any election.

Mr. Price: While we are talking on this subject—is there any provision for the election of school directors at the same time that municipal officers are provided for?

Mr. Ellis: There is a provision. We have not, of course, attempted to cover the question of schools.

Mr. Price: If there is no provision here for that we would have to hold a special election—and if we could not elect a school board at this election—if this code does not effect the election of school boards, then the municipality would have to hold a special school election.

Mr. Ellis: That is true, that is to say, in every municipality that would not be true in every municipality—but in every municipality where you elect school directors, out of which are elected one-third at a time, the others holding over, you will have to have annual elections.

Mr. Price: Take the case of villages—the villages in this state elected mayors last spring for two years—now in the villages holding school elections every year—you would be legislating out of control the mayors and probably others and yet not getting rid of municipal annual elections. Is there any necessity for legislating them out of office, if the villages hold school elections every year?

Mr. Ellis: It will be true that in those municipalities where you elect the members of the school board annually you will have an election in those municipalities at the off year; that is to say, at the time when you are not electing the municipal officers; but if you ask whether or not in my judgment it would be wise to legislate the village officers or the city officers out of office next spring I should say most emphatically that it is of the highest importance that all officers under this act should go into office at the same time, and that even though it result in putting somebody out of office. It is putting me out of office in Cincinnati before my term expires, but it is more important to the state in my judgment, and the people of the municipalities most—that where new powers are given and new duties are proposed, and new functions are to be exercised and new agencies are created to exercise them, if there is any benefit in uniformity of operation at all it must be in that.

Mr. Price: The villages have been uniform in their laws in the past.

Mr. Ellis: Not in every respect.

Mr. Price: You leave us the expense if you leave the school board without provision for directors.

Mr. Willis: Do you think there is any doubt about the constitutional power to legislate these mayors, etc., out of office?

Mr. Ellis: None in my judgment.

Mr. Cummings: In answer to the question of Mr. Price, I will say this, that in villages very largely over this state the village school district is not the same as the municipal district. That is the school district elections are almost all of them conducted at the same time, using a separate ballot box.

Mr. Price: The municipal corporation pays for the election and one set of officers conduct the same.

Mr. Maag: In regard to the city of Youngstown. If this law goes into effect, and the city is divided into different districts, how are we to elect members of the board of education. We have no districts.

Mr. Ellis: You will find in section 73 a provision with respect to the redistricting of cities. In line 796 are these words: "and the wards established at any time under the authority of this act shall exist for all local election and other purposes, including the election of members of the board of education, for which wards are recognized by law."

The next officer is the auditor of the city. There is not anything new in the duties imposed upon the auditor. They are the familiar duties that he now performs in all cities throughout the state.

Mr. Huffman: Take the city of Hamilton—we have between twenty-five and thirty thousand inhabitants—it is our county seat. We don't use the city auditor. We use the city treasurer. Under this form of government it would make our expenses much greater than today. Is there any way to avoid this?

Mr. Ellis: What officer have you to take place of auditor?

Mr. Huffman: Board of control's clerk.

Mr. Ellis: You have a council in Hamilton?

Mr. Huffman: No.

Mr. Ellis: You have a mayor, clerk of board of control?

Mr. Huffman: We have no city treasurer—the county treasurer acts as the city treasurer.

Mr. Ellis: What other boards have you?

Mr. Huffman: * * *

Have you a board of health?

Mr. Huffman: Yes, we have a board of health.

Mr. Ellis: Infirmary board?

Mr. Huffman: Yes.

* * *

Have you a hospital board?

Mr. Huffman: Yes.

Mr. Ellis: I think if you check over the number of boards you have in Hamilton, even though you are required to have another, you won't have over about half or seventy-five per cent. as many officers after this is in effect as you have today.

Mr. Huffman: You see our board of control—the members are divided—they look after certain points—some look after the police and fire departments, some look after the streets.

Mr. Ellis: Has this board legislative powers?

Mr. Huffman: Yes, sir.

Mr. Ellis: Look after contracts.

Mr. Huffman: Yes.

Mr. Ellis: Now so far as the county treasurer is concerned; as every one knows, there is an act today in force which provides that in county seats the treasurer of the county may be treasurer of the municipality. Just as I suggested a while ago that mayors will be eligible to the office of judge of police court — so I can see no objection to providing that the county treasurer may be treasurer of any municipality. I would suggest that if it is desired to permit municipalities within the county to have the county treasurer act as their treasurer that it would be very easy, as you see. When you come to section 89 — (Treasurer) "The treasurer shall be elected for a term of three years, and shall serve until his successor is elected and qualified. He shall be an elector of the corporation, and a resident thereof for at least five years next preceding his election." Provide that the county treasurer of any county shall be eligible to the office of city treasurer or municipal treasurer of any municipality within the county.

Mr. Col: In that case you have to elect the city treasurer. Does that place the county treasurer on the city ticket?

Mr. Ellis: Yes.

Mr. Chapman: Would it be incorrect to have the county treasurer appointed by the mayor as the city treasurer?

Mr. Ellis: I would not like to go into that discussion unless you want to give more time to it than this committee has. I don't think it would be wise to provide a different method for the choosing of the city treasurer in one place from that which might be provided in another place; nor do I think it wise, though it may be constitutional, to provide that the county treasurer be appointed city treasurer. I believe the treasurer ought to be elected — elected by the people. I think it particularly important that county officers should be chosen by the people, not appointed by the mayor.

Mr. Chapman: I don't want to go into the discussion of it. I am a resident of the city of Dayton. We have a population of about one hundred thousand. The county treasurer does the work for five hundred dollars a year, and if he was elected to city treasurer the expense of that office would probably be ten thousand a year — so you see what a dis-

advantage it would be to have the county treasurer elected to city treasurer.

Mr. Comings: Is there any provision that says the city treasurer shall be a resident of the city?

Mr. Ellis: Yes.

Mr. Comings: Well, it often happens that the county treasurer is not a resident of the municipality.

Mr. Ellis: An amendment would do away with this.

Mr. Gear: Provided this code shall become a law, you believe it would be constitutional to legislate out of office the present existing officers of a municipality. Then I draw your attention to section 132, which says that "All officers elected by the people or appointed by any authority, and all employes under any boards or officers in any municipal corporation, and all officers or employes on any educational, charitable, benevolent, penal or reformatory institution in any such corporation, now serving as such, shall remain in their respective offices and employments and continue to perform the several duties thereof under existing laws, and receive the compensation therefor until their successors are chosen or appointed and qualified or until removed by the proper authority in accordance with the provisions of this act."

Mr. Ellis: Their successors are chosen or appointed and qualified until removed by the proper authority in accordance with the provisions of this act — before the expiration of their terms, between now and the time the new officers are qualified — the old officers in order not to have any interregnum, the old officers shall continue until such time as they can organize.

Mr. Price: Such time as they can be organized under this act.

Mr. Painter: The provision in this matter that provides that a man must be a resident not less than five years to be a city treasurer — the way that would be avoided would be by making a provision that county treasurers are eligible to the treasureship of municipal corporations whether they be residents of the corporation or not.

Mr. Price: In the grouping of these boards and the powers of the several boards that we have in the municipalities and conferring them upon two boards, and to be specific, we have some provision for library boards, boards of health and other boards, do you group these, believing that nearer a higher result under municipal government, or because you think an emergency requires that that be done.

Mr. Ellis: I think both considerations have been made. I believe that the board of public service created by this act occupies somewhat of the same position to the municipal corporation that the executive committees of a board of directors of a private corporation does. I see no reason why three good men, such as ought to be and no doubt will be chosen for such officers in the various cities of the state, shall not be able to take care, ably, conscientiously, and well—shall not be able to manage all the institutions and all the public works, so far as the executive and administrative duties are concerned, of the municipality. I don't expect one of these men to be a librarian, or one to be a civil engineer—I don't expect one of these men to be a physician, because I expect this board to be a department of health.

Mr. Price: Here is the idea I had in mind, Mr. Ellis. In this code the powers for municipalities are exercised by fewer boards than they are to-day. By gradual demarkation there has been a library board created, on the ground that they tried to get the institution out of politics. We have had our benevolent institutions put on the same plan; we have put them above—beyond what is called party politics; but still the administrative power has been laid in a certain board generally in a city. Now the question was whether you think that these powers, gathered up and centered in one board, will bring better government, or whether the necessity was to leave it to some one and work back in the future to where we are.

Mr. Ellis: I think we ought to go back to fewer boards and fewer officers and I have started to accomplish that in the drawing of this bill. More than that, I believe that the greater importance than that is the fixing of the greater responsibility by giving to a board of three the management, supervision and performance of all administrative duties and functions of the state, putting the responsibility upon them. In the city of Cincinnati we at one time had an infirmity board, board of health, board of park commissioners, board of improvements, and perhaps five or six more boards, members of police commissioners, etc. Now we have centered in one board all the powers of the board of health, park commission, platting commission, board of improvements, and one or two other boards. Waterworks trustees was another board we once had. All these have in fact been centered, with the exception of the hospital board, in the one board of public service, and in our city those various functions have been performed by that one board, and we have never had a better board than we have to-day elected by the people. At the

time we had a number of boards the public in general were not watching any particular center of responsibility. When the duties were divided we had three or four of our boards suddenly discovered to have been embezzling the money of the people. We had an infirmity board down in Cincinnati that had been running along a number of years. No one thought anything about the infirmity board. There are a great many boards that we never think about. That is one reason why the people say that this bill, or one like it, is going to create a large number of offices, and yet if they thought it up they would find a large number of boards they never thought of. These boards are spending public money, nevertheless; noiselessly, silently they are going on. It is those kind of boards that are always discovered embezzling money, because they have not been watched by the people. There is no center. In Cincinnati our infirmity board had been a respectable board for many years. Nobody thought anything about it. Suddenly it was discovered that they had stolen two hundred and ten thousand dollars of money.

Mr. Willis: A gentleman asked this question: What would be the evil in permitting a municipality to choose its own form of government as between the village or city—what would be the evil?

Mr. Cummings: Had we not better wait the discussion of that question and let Mr. Ellis go on. I will leave it to the committee.

Mr. Stage: In view of the fact that according to the program adopted for this committee we have a meeting for Thursday night and both of our sessions on Friday devoted to discussions by the committee, it seems to me it would be better and to greater advantage to the committee at this time to exhaust all the questions on the code that we wish to have Mr. Ellis discuss, and push forward. Let us finish with Mr. Ellis at this time and if there is time remaining for Mr. Bennet he can speak this evening. It seems advisable to me that we should now exhaust, as far as we are able, Mr. Ellis' knowledge on this subject. I move, therefore, that Mr. Ellis continue the discussion here and we be permitted to ask such questions as we desire.

Motion seconded.

Mr. Thomas: It seems to me that the discussion with Mr. Ellis is intended to be only a preliminary one—the general features of this bill. We cannot expect to exhaust the subject on which he speaks this afternoon. We have to come back to this subject again, and it seems to me that it is better to let him continue the discussion of the subject, and we will take up these details at a later time, either with Mr. Ellis

or some other person that might follow on the general program we have laid down.

Mr. Hypes: I fully agree with the gentleman from Huron. I certainly don't think we can in anywise exhaust Mr. Ellis on this subject, and I believe we have not been exactly fair in taking up his time this afternoon.

Mr. Cummings: The question is, whether Mr. Ellis shall continue as he began, with questions thrown in and with the remainder of the program carried forward to-morrow morning.

Mr. Williams: Perhaps we had better consult Mr. Ellis.

Mr. Ellis: If satisfactory to the committee I should like to close the discussion now, and if the committee wants it resumed again I can do so. I have word from the Senate that they are in some discussion over there and I am asked to come over. If the committee will excuse me I would like to go to the Senate chamber.

Mr. Stage: I withdraw the motion.

Intermission was here taken. After which Mr. Smith Bennett was introduced and spoke as follows:

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

SMITH BENNETT.

AUGUST 27, 1902, 2.30 P. M.

I have been asked to address your committee upon the principles embraced in the code that has been submitted by the governor of Ohio, and to give an explanation of some of the provisions contained therein.

Any argument upon this proposition that would be attempted to be founded upon the supposition that each and every member of this committee had not given as earnest thought to these questions as the speaker has, would undoubtedly be a false assumption, for you have long and diligently studied the complex question of municipal government, and have repeatedly had several propositions that are now embraced in this bill, brought before you either personally, or in your committee work, as members of this body, in some form or another.

I therefore can rightfully assume that no new question is before you, but one of a series of them, that have been considered by you, in all their details.

It is easy, upon a casual reading of the bill, to make an analysis of the same as to the divisions of municipalities, the subdivision of all municipal governments into the three fundamental divisions, legislative, executive and judicial, the officary that is provided for each class, the powers that are conferred upon them, and the means and methods of their execution.

But when this is all detailed, it is the active, concrete part that is apparent, and a deeper study must be given of the proposition, to discover upon what theory of government the bill is drafted, and the principles to be subserved in this form of organization.

First. It is deemed of first importance to observe that the principles of both the federal and the state government, or which may be otherwise known as the American form of government, are religiously preserved in this bill, i. e., that of the tripartite form of government spoken of. Each branch is kept separate and distinct from the other

branches, and therein the wisdom of those who have in the past erected both national and state codes — so to speak — is here invoked, and all the way through in each provision, thorough discrimination is made between those powers which are plainly executive or administrative in form as distinguished from those which are legislative; and both of these in turn, from those which are judicial. This is one of the fundamental, underlying propositions upon which this code is constructed. This may be spoken of as the division of governmental powers.

Second: Next in order is this narration, comes the question of the grant of powers. Within this the larger part of the argument must concentrate, and it must necessarily arrange itself around the question, whether the people in their municipal form of government are exercising original or delegated powers, and herein arises the proposition that seems to have been lost sight of by some very eminent authors, that we are attempting to erect a form of municipal government within, and not outside of our state constitution.

Recognizing that the constitution is binding upon municipal corporations, the same as individuals, and that its principles cannot be transcended, we consider certain sections of the constitution of 51 as a limitation upon the right, not of self government, but of the right to organize municipal governments. The argument upon this proposition has been made elsewhere, and it might be well to review it here. To have you weigh it along with the propositions you are now considering. Speaking personally, I am content to rest this proposition upon the expression of Justice McIlvain in the case of *Ohio ex rel. Attorney General vs. Covington*, 29 O. S., quoting from pages 112-113:

“Rules and regulations for local, municipal government of cities and villages are subject of, and are as clearly within the scope of legislation as are those which concern the state at large. Cities and villages are agencies of the state government. Their organization and government are under the control of the state, and every law which affects them must emanate from the general assembly, where the legislative power of the state is vested.”

The section referred to by the learned justice is section 1 of article 2 of the constitution.

“The legislative power of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives.”

This is a full and complete investment of power of legislation in the general assembly by the people of the state. Comparing it with the grant of legislative power in the federal constitution, the striking differ-

ence of the two will be observed. The instrument says: Article 1, Section

"The legislative power herein granted shall be vested in a congress of the United States and"

It was said by Justice [] in the case of *Ex parte Curtis* (11 Ohio St. 291, 1862), that the difference between the Federal and State constitutions was "that in the former we look to see if a power is expressly given, in the latter to see if it is denied or 'limited';" the congress being permitted to exercise only such legislative power as is expressly granted, while the state legislature exercise all legislative power not denied. [] speaking of this section of the Ohio constitution, said:

"The General Assembly cannot surrender any portion of the legislative authority with which it is invested, or authorize its exercise by any other person or body, is a proposition too clear for argument, and too easily proven. This inability arises no less from the general principle applicable to every delegated power requiring knowledge, discretion and responsibility in its exercise, than from the positive provisions of the constitution itself. The people, in whom it resided, have voluntarily surrendered its exercise, and have positively ordained that it shall be vested in the General Assembly. It can only be reclaimed by them by an amendment or abolition of the constitution, for which they alone are competent. To allow the General Assembly to cast it back upon them would be to subvert the constitution and change its distribution of powers without their action or consent."

It is thus apparent that in the minds of jurists no greater grant of legislative power could be made by the people than that which has been made to the General Assembly of Ohio. In fact, it is so full and complete that no portion of that power remains in the grantor, the people, unless denied in other sections of that instrument. It is necessary to consider the fullness of that power, and determine where it resides, for it thus affords us a key to determine the meaning of section 6 of article 13 of the constitution where it declares that:

"The General Assembly shall provide for the organization of cities and incorporated villages by general laws."

If it is to be done by general laws, it must be exercised by the only body that can enact laws — the General Assembly. Therefore, it is that body which is to provide for the organization. It is not the people, because the people do not possess that legislative power. It is not to be done in any particular way save by general laws. Therefore, if anything is certain, it is that all municipal corporations are the creatures of

the legislature, and the provision for their organization is vested in that body, and not in the corporations themselves, nor in the people who compose them.

If this be true whence comes the authority, as contended for by the Ohio State Board of Commerce, that the people in the various municipalities of the state should have submitted to them the question of their organization, for their acceptance or rejection, to be determined by popular vote? The General Assembly is commanded to provide for the organization of "cities and incorporated villages by general laws." It has no power to organize one city or one village by any other law than that which organizes all cities and all villages. The special organization of municipalities, making one different from the other by sham classification, was the great vice of special legislation which the Supreme Court has said, in the Toledo and Cleveland cases, shall no longer obtain.

But seeking to avoid this conclusion, the adherents of their form of code say that each municipality, by a "municipal constitutional convention," shall formulate and adopt its own code, or "municipal constitution," pursuant to a general law, to be passed, authorizing that form of procedure. In other words, that the General Assembly should not obey the mandate contained in section 6 of article 13 of the constitution, and provide for the organization of cities and villages, but should surrender to the people of each municipality the power to do that which the people, in the constitution, said the General Assembly should do. We should here again quote the words of Judge Ranney, cited above: "To allow the General Assembly to cast it (the legislative power) back upon them (the people) would be to subvert the constitution and change its distribution of powers without their action or consent."

Without considering the feasibility of the proposition of about sixteen hundred municipalities holding as many municipal constitutional siding. The discussion of the code by village and city solicitors and the conventions and elections this fall, to determine the particular form of organization of each one, I deny that there exists any constitutional warrant for such procedure.

Judge Cooley, in his *Constitutional Limitations*, in speaking of the legislative power as vested in the General Assembly of each state, says:

"In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by, the sovereign powers of any country, subject only to such restrictions as they

may have seen fit to impose, and to the limitations which are contained in the constitution of the United States. The legislature is not made a special agency for the exercise of specifically defined legislative powers, but is intrusted with the general authority to make laws at discretion."

And further says:

"Every positive discretion contains an implication against anything contrary to it, or which would frustrate or disappoint the purpose of that provision."

The clause in the constitution for providing for the organization of cities and villages is imperative. That duty is imposed upon the General Assembly. Can there any implication arise from the language of Section 6, Article 13, that the work required is either to be done by the people or, if done by the General Assembly, that it is to be submitted to the people for their affirmance or disaffirmance? The position assumed by the State Board of Commerce would frustrate and destroy the purpose of that provision of the constitution, in that uniformity would be destroyed, and each municipality would adopt a municipal charter of its own entirely dissimilar to every other one. But another serious objection is made to the procedure advocated by that body of submitting the question to a particular vote. This evidently proceeds upon the assumption that the referendum, so-called, or the right of the people to vote upon such a law exists.

We do not assert that the referendum cannot be invoked in Ohio in proper cases; on the contrary, can refer to many statutes, wherein the right is preserved. But the question of the performance of a duty, incumbent upon a legislature to perform, can never be submitted by them to the people. The constitution says:

"The General Assembly shall provide for raising revenue," etc.

It does so provide by general laws, but it does not submit the question of how it shall be done to the people. If the General Assembly provides for the organization of municipalities, it must be by general laws. One might as well content that the question of the enactment of a Crime's Act should be submitted to the people.

Another vital objection to be urged against the bill of the State Board of Commerce is that in conferring legislative power upon the councils of cities and villages, it is done in the most general terms, such as they shall have power to provide by ordinance "for the general welfare and good government of the municipality and its inhabitants, and may make local regulations, etc."

The rule is well settled that municipal corporations are like private corporations, they can exercise no powers except those that are expressly conferred. Judge Spear states the rule in *Ravenna v. Pennsylvania Company*, 45 Ohio St., 125, as follows:

"When the question is whether such an organization has authority to enact a particular ordinance, it must be shown that the power to do a particular thing in the way marked out has been given either expressly or by clear implication."

Under such a grant of power, a municipality has no authority to enact an ordinance providing for the lighting of the crossing of a railroad, nor to provide for a watchman. Under a grant of power similar to the one in the bill under question, it was held by the Supreme Court, that it did not give a municipality power to enact an ordinance restraining horses, cattle and swine from running on the streets. While a general grant may be intended to cover all needful regulations, yet the powers must be specifically enumerated, as they now are in the existing statute, Section 1692. It has been said by our Supreme Court, that the fact that various powers are not specifically enumerated, was evidence that the municipalities should not exercise those powers.

We reaffirm that the people's right to control and govern within each municipality is largely preserved within this bill, but it is with the recognition of those limitations which the constitution itself has imposed upon the municipalities, the same as upon individuals.

The constitution of Ohio does not contain any provision such as is contained within the constitutions of California, Missouri, Minnesota and Washington, where it is provided in substance, that any incorporated city or town in the state, having a given population, may adopt a charter in the manner therein set forth. These charters may be separate and distinct from all others. In Ohio that would be called special legislation, and it is the very proposition that we attempted to recede from, when we adopted the constitution of 1851, that is now permissible in the states mentioned. But already, in these other states, an alarm is being sounded, because the Supreme Court of California has held that a special form of city charter must be controlled by certain general legislation, so that the anomalous condition has arisen, that a city may have a special provision for issuing bonds, which may be altered or repealed by a general law passed upon the same subject, which was not intended originally to affect the special charter, but which the courts construe, does alter them.

Third: Home rule is permissible in the fullest extent under this bill, that is consonant with the constitution. Take the matter of tax limit, it is fixed at ten mills. Yet provision is made, hat if it is desired to levy further taxes for any purpose provided by law, it can be done by the people voting thereon, and if two-thirds of those voting on the proposition are in favor of it, authority to levy an additional ten mills can be given. Herein is a recognition of the referendum.

Municipal ownership is not discouraged nor denied. All rights vested by existing statutes in municipalities to own and control, construct and operate, public service corporations, are still preserved and recognized in this bill.

Having limited the tax rate, it was but proper for us to give the right to the council of a city or village to transfer funds from one to another. This can be done under section 46 after an affirmative vote of three-fourths of all the members elected to the council, and approval of the mayor.

Under the head of assessments, the rule as announced by the Supreme Court of the United States, that no assessment shall be levied in excess of benefits, has been followed thereby avoiding the conclusions reached by that court in the case of Village of Norwood vs. Baker ;

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

EVENING SESSION.

WEDNESDAY, August 27, 1902.

The Special Committee for the Consideration of Municipal Code Bills met in the hall of the House of Representatives and was called to order at 7:35 o'clock by the chairman.

Upon the calling of the roll by Secretary Huffman, the presence of the following members was disclosed:

Chairman Comings, of Lorain,	Worthington, of Belmont,
Guerin, of Erie,	Denman, of Lucas,
Cole, of Hancock,	Willis, of Hardin,
Williams, of Hamilton,	Stage, of Cuyahoga,
Metzger, of Stark,	Ainsworth, of Defiance,
Thomas, of Huron,	Maag, of Mahoning,
Allen, of Fulton,	Sharp, of Fairfield, and
Silberberg, of Hamilton,	Secretary Huffman, of Butler.

Chairman Comings introduced Judge Gilbert H. Stewart, of Columbus, who spoke as follows:

REMARKS OF HON. GILBERT H. STEWART.

Mr. Chairman, and Gentlemen of the Committee: I am, as I stand here to-night, confronted by two circumstances, one embarrassing and the other peculiar. It is embarrassing to me that our bill — the bill prepared by the Ohio State Board of Commerce, was introduced into the legislature so late that printed copies have not been made as yet to be laid before the members of the committee, which will necessitate my reading the bill to you in order that you may be familiarized with its provisions before Mr. McMahon speaks to you, for his address will be the main address.

Indeed I do not think I should have said anything if it had not been necessary to lay the provisions of the bill before you.

The other circumstance is that I am here to-night to present for your consideration a bill, the foundation principle of which the governor of Ohio has seen fit in an official message sent to this body, to ask you to disregard. This circumstance is peculiar but it is not embarrassing, for I know that what we advocate is right. I know it is the embodiment of that "home rule" which the citizens of Ohio demand. I believe it to be constitutional.

I know the members of this General Assembly; I know them as men I have met day after day, and I know they are impressed with the dignity of the office which they hold and the importance of the duties which have been devolved upon them, and that they will uphold that dignity and will faithfully perform those duties, and in that performance will accept suggestions upon this very important topic of municipal government, whether they come with official sanction or without it; and that when your work is completed it will represent your sense of what should be heeded, and your views of what is best for the municipalities of Ohio; therefore, I say again, gentlemen, the second circumstance does not embarrass me in the least.

Now I will take your time for about ten minutes to read to you the bill, because it is important that you should know its provisions before it is discussed.

First, I shall say to you it is not a municipal code. We have not attempted to codify the laws of the state. We have attempted to provide simply a bill for the government of municipalities, and we believe that in a great many respects—those essential to the government of the cities—there are now upon the statute books constitutional laws which will supplement whatever is provided for in this bill.

This bill, of course, is subject to general laws; it is subject to the general laws in effect when it is passed, if it is passed, and it is further subject to all general laws which the legislature may pass at any time in the future, as any municipal bill must be. Therefore, the legislature has not surrendered any of its powers over municipal corporations when it adopts this bill.

The bill is as follows:

A BILL

To provide for the organization of cities and incorporated villages.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. All cities and villages hereinafter created within this state shall be organized under the provisions of this act; and all cities

villages and hamlets heretofore incorporated under the laws of this state shall reorganize under the provisions of this act.

SECTION 2. For the purpose of organizing or reorganizing under this act, there shall be elected at a special election, held for this and no other purpose, delegates to a municipal constitutional convention, whose duty it shall be to formulate and adopt a municipal constitution.

Such election shall be conducted according to the provisions of the laws regulating annual municipal elections, except that no party ticket, name or device shall be printed upon the ballot. Candidates for delegates to municipal constitutional conventions shall be nominated by petition only and the names of the candidates shall be printed upon the ballot in one list in alphabetical order. The law regulating nominations by petition shall govern insofar as applicable.

SECTION 3. The legislative bodies of each city, village and hamlet in this state, shall, within thirty (30) days after the passage of this act, provide by ordinance, for an election to take place not less than twenty-five (25) days nor more than forty (40) days thereafter, for the election of delegates to a municipal constitutional convention. The ordinance providing for such election shall fix the time for holding such election, the number of delegates to be elected and the time and place for the municipal convention to meet and organize.

SECTION 4. In cases of original incorporation the agent or agents of the incorporators, shall, within thirty (30) days after the record is made as provided in section 1560, Revised Statutes, fix the time for holding an election for the purpose of electing delegates to a municipal constitutional convention, which shall be not less than twenty-five (25) days nor more than forty (40) days thereafter, the number of delegates to be elected and the time and place for the convention to meet and organize; and notice thereof printed or plainly written, shall be posted by such agent or agents, at three or more public places within the limits of the corporation, at least twenty-five (25) days before the election; which election shall be conducted in the manner prescribed for the election of township officers.

SECTION 5. Delegates to municipal constitutional conventions shall not be fewer than five (5) nor more than fifty (50) in number. They shall be electors of the municipality. They shall be elected at large. They shall convene within thirty (30) days after their election and choose their own officers, but the presiding officer shall be chosen from their own number. They shall adopt their own methods of procedure and

shall complete their work within sixty (60) days after the day when first convened.

The delegates shall serve without compensation, but reasonable expenses for the hire of clerks and other ministerial officers and for stationery and printing shall be paid by appropriation from municipal funds, which shall be made by ordinance.

SECTION 6. Municipal constitutions shall be styled, "The municipal constitution of the city of _____, or the village of _____," as the case may be.

It shall provide a scheme of organization and make necessary provision for all officers provided for in this act, defining their powers and duties and fixing their salaries when the same are not prescribed by law.

It may provide for all administrative officers and boards necessary for the good government of the corporation and the exercise of its corporate power, prescribe their duties, fix their terms, salaries, bonds and methods of selection and removal and provide methods for filling vacancies.

I may suggest at this point, gentlemen, that when you come to the consideration of this measure, you try to discover the difference between putting that power in the hands of all the citizens of a municipality and putting it in the hands of three citizens of that municipality. If the distinction between those two methods raises a question of constitutional law then I confess that I have studied law to no purpose. To my mind it is no question of law; it is a question of policy, but I ask you to consider that question when you take up this bill and compare it with others.

It may place limits upon the power of council in all matters, but when the power of council is not limited by the municipal constitution, the council may exercise all legislative powers conferred by this act.

It shall provide methods for its amendment at intervals of not less than two years and for municipal constitutional conventions to be held at intervals of not less than ten (10) years.

SECTION 7. When a municipal convention has adopted a municipal constitution, it shall be signed and certified in duplicate by the officers of said convention. One copy thereof shall be filed with the clerk of the said municipality; the other copy thereof shall be filed with the secretary of state.

When a municipal constitution has been amended one copy of such amendment and the fact of its adoption, fully certified by the mayor, shall

be filed with the secretary of state and one with the clerk of the municipality.

SECTION 8. Municipal corporations shall be cities or villages according as they adopt municipal constitutions providing for city or village organizations. Any city or village may by properly amending its municipal constitution pass from one class to the other.

SECTION 9. The elective officers provided for in this act and the municipal constitution shall be chosen by the electors at the next regular election for municipal officers.

SECTION 10. The inhabitants of any city or village organized under this act are hereby constituted a body politic and corporate, under the name of the city of ———, or the village of ———, as the case may be; and as such they may sue and be sued, contract and be contracted with, acquire, appropriate, hold, possess, lease and dispose of property subject to the restrictions contained in the general laws, have and use a common seal, and change or alter the same at pleasure, and exercise such other powers and have such other privileges as are or may be conferred by law.

SECTION 11. And this is the section which has proved to be a stumbling block in the way of some very reputable people. It is, however, the result of years of study upon the subject of municipal law and municipal corporations, and it is thought to embody what is best in all that is taught upon that subject, and in a concise form.

If it be true that a city cannot be organized unless all of its powers and all its organization is detailed by the legislature then this section of our bill is unconstitutional; but I ask you when you come to consider that question, gentlemen, to say whereabouts the constitutionality stops in the matter of detail. Do you name half the offices of a corporation and then say that the council or somebody else may choose the balance? Is that where the constitution stops?

I say, gentlemen, that when you come to that point you will have to confess either that the grant of power contained in this section is constitutional or that you must provide for the organization of cities and villages in Ohio by fixing the salary and term of the man who cleans the spittoons in the city hall. You can not allow anybody else to do it. There is no half-way ground.

SECTION 11. For the perfection of its organization, for the control and management of its municipal affairs and for the general welfare and good government of the municipality and its inhabitants, any

city and village may make and enforce, within its limits, all such local, police, sanitary and other regulations as are not in conflict with general laws, and to carry into effect the powers thus granted it may create indebtedness, levy taxes and assessments, and enact and enforce by reasonable fines, penalties and imprisonments, all necessary ordinances and resolutions.

SECTION 12. The executive power in cities and villages shall be vested in a mayor, chosen by the electors, who shall hold office for the term of two years, and until his successor is elected and qualified.

The mayor shall have the power of veto as hereinafter provided.

SECTION 13. Such administrative officers as may be necessary for the good government of the corporation and the exercise of its corporate powers, may be provided for in the municipal constitution or by ordinance.

SECTION 14. Executive and administrative officers shall not exercise any legislative or judicial powers, except, that the mayors of villages may exercise such judicial powers as are or may be conferred by law.

SECTION 15. Every executive and administrative officer, whether elected or appointed, shall take an oath of office and give such bond and perform such duties as may be prescribed in the municipal constitution or by ordinance.

SECTION 16. The legislative power in cities and villages shall be vested in a municipal council of one body, consisting of not fewer than five (5) nor more than thirty-five (35) members, to be chosen by the electors. They may all be elected at large, or part at large and part from councilmanic districts; or all from councilmanic districts, as may be provided by the municipal constitution. They shall hold office for two years and until their successors are elected and qualified.

SECTION 17. The municipal constitution shall fix the number of the councilmen and shall prescribe the number and the boundaries of the councilmanic districts. Councilmanic districts shall be bounded, so far as practicable, by streets, alleys, avenues, public grounds, canals, water courses, corporation lines, center lines of platted streets or railroads, and be composed of adjacent and compact territory and the several districts shall contain as nearly an equal number of inhabitants as may be practicable.

SECTION 18. At the first regular meeting of the municipal council, the mayor, or in his absence or inability, the clerk shall call to order the members-elect; and as the members-elect are called they shall pre-

sent their certificates and take the required oath. If those present constitute a quorum to transact business, they shall, forthwith, proceed to organize by electing a president and president pro tempore from their own number, and by appointing a clerk and such other officers and employes necessary to perfect their organization as may be provided by ordinance; and no business shall be transacted until such organization is effected.

Except as herein provided, council shall exercise no power of election or appointment.

SECTION 19. A majority of all the members elected shall constitute a quorum to transact business; but a less number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as may be prescribed by ordinance.

SECTION 20. The council shall not be required to hold more than one regular meeting each week; and the meetings may be held at such time and place as may be prescribed by ordinance, and shall at all times be open to the public; and the mayor or any three members, may call special meetings upon notice to each member served personally, or left at his usual place of abode.

SECTION 21. No ordinance, resolution or order creating any office or fixing the salary or bond of any officer, or involving an expenditure of money, or the approval of a contract for the payment of money, or creating an indebtedness, or for the purchase, sale, lease or transfer of property, or for granting a franchise, or creating a right, or levying any tax, or fixing the charge to be paid by any private or other user for any public service, or imposing any fine, penalty or forfeiture, shall be passed until at least one week shall have elapsed after the same has been introduced and read in the council, and every such ordinance, resolution or order, which shall have passed the Council, shall, before it takes effect be presented, duly certified by the clerk to the mayor for approval.

SECTION 22. The mayor, if he approve of such ordinance, resolution or order, shall sign it, but if he does not approve the same, he shall return it with his objection to the council, within ten (10) days thereafter, and if council is not in session, then to the clerk, who shall transmit the same to council at its next regular meeting thereafter; which objections the council shall cause to be entered in full on its journal; provided, that the mayor may approve or disapprove the whole or any item or part of any ordinance, resolution or order appropriating money; and if he does

not return the same in the time above limited, it shall take effect in the same manner as if he had signed it.

SECTION 23. When the mayor refuses to sign any such ordinance, resolution or order, or part thereof, and returns it, with his objections, to the council, the council shall, after the expiration of not less than one week, proceed to reconsider the same, and if such ordinance, resolution or order is approved by the votes of two-thirds (2-3) of all the members elected it shall then take effect in the same manner as if he had signed it; and in all such cases the vote shall be taken by yeas and nays and entered on the journal.

SECTION 24. Municipal constitutions shall specify the purpose or purposes for which taxes may be assessed and fix a limit upon the rate for all municipal purposes that may be assessed in any one year, which shall not exceed exclusive of sinking fund, in cities ten (10) mills, and in villages eight (8) mills on each dollar of valuation of taxable property in the corporation as shown in the tax duplicate.

SECTION 25. Municipal constitutions shall specify the purposes for which municipal indebtedness may be incurred, the manner of authorizing such indebtedness, regulations and provisions for its payment and a limit therefor which shall never exceed in the aggregate in cities ten (10) and in villages five (5) per centum of the total valuation as shown by the tax duplicate.

SECTION 26. All special assessments shall be levied in proportion to the benefits which may result from the improvement or service rendered, and the special assessments for all purposes, levied or assessed upon any lot of land, shall not exceed twenty-five (25) per cent of the tax valuation of the same for the year when the assessment is levied and there shall not be collected of such assessment in any one year more than one-tenth (1-10) of such value of the property on which the assessment is made, and in no case shall the assessment for the cost of constructing a sewer exceed ten (10) per cent of the tax valuation of the property on which the same is assessed, and all special assessments shall be so restricted that the same territory shall not be assessed for making two different improvements within a period of five years, in such amounts that the maximum amount herein provided for will be thereby exceeded.

SECTION 27. In each city there shall be a court held by a police judge, which court shall be styled the police court and be a court of record; said court shall have a clerk and such other officers as may be provided in the municipal constitution or by ordinance.

SECTION 28. A police judge and a clerk of the police court shall be chosen by the electors and shall hold office for the term of three (3) years and until their successors are elected and qualified. No person shall be eligible to the office of police judge who is not an attorney and counselor at law, duly admitted to practice in this state.

SECTION 29. Said court shall have jurisdiction of any offense under any ordinance of the city of any misdemeanor committed within the limits of the county, to hear and finally determine the same and impose the prescribed penalty; but cases in which the accused is entitled to a trial by jury, shall be so tried if a jury is demanded.

SECTION 30. In felonies committed within the county, said court shall have the powers of a justice of the peace to hear the case, and discharge, recognize or commit; and if upon such hearing the court is of the opinion that the offense is only a misdemeanor and within the jurisdiction of the court, a plea of guilty of such misdemeanor may be received, and the sentence and judgment pronounced; but in such case, the accused decline to enter such plea, the court, without discharging the accused, shall cause the prosecuting officer to immediately file in the court an information against the accused for such misdemeanor, on which charge he shall be tried in that court, after an entry has been made discharging him of the felony.

SECTION 31. During the absence, inability or disability of a judge, the mayor may appoint, to hold the court, a reputable member of the bar, residing in the city, who shall have the jurisdiction and powers conferred upon judges of police courts, be styled "acting police judge," and, as such, shall have all the powers and perform all the duties of the judge.

SECTION 32. The clerk of the police court shall have power when an affidavit is filed with him for a peace warrant, search warrant, or charging any person with the commission of an offense, to issue a warrant under seal of said court to arrest the accused or search the place described; to admit to bail any person accused of a misdemeanor or violation of an ordinance for his appearance at the next sitting of the police court; and bond given to continue until the case is finally disposed of; and also to admit to bail any person accused of a felony when the amount of bail has been fixed by the court; to appoint one or more deputies to be approved by the council, to administer oaths and to perform all other things which may be performed by the clerk of the court of common pleas in like cases.

SECTION 33. The provisions of section 1786, 1787, 1790, 1791, 1792, 1793, 1794, 1795, 1798, 1799, 1800, 1801, 1803, 1805, 1806, 1810, and 1811 and all other provisions of the Revised Statutes, not inconsistent with this act, are hereby made applicable to police courts and the officers thereof.

We have found it necessary to rewrite some of these sections in reference to police courts, because of reference to cities of "first class," "second class," cities of "third class," etc., down to third grade, third a, I believe some of them were.

SECTION 34. The first regular session of each municipal council shall be held on the third Monday in the month of April in which the council is elected and all elected officers shall assume the duties of their offices on the third Monday in the month of April in which they are elected.

SECTION 35. The fiscal year in all municipal corporations shall terminate on the thirty-first (31st) day of December, in each year, and all accounts shall be closed on that day, and all annual reports required by law shall be made for the year terminating on that day.

SECTION 36. Existing municipal corporations and those hereafter created shall be governed by the provisions of this act and of existing general laws not hereby repealed; and the territorial limits of such existing corporations, and the wards thereof, shall remain as they are, until changed in the manner provided by law.

SECTION 37. All rights and properties which were vested in any municipal corporation under its former organization, shall be deemed vested in the same municipal corporation under the organization made in pursuance of this act; and no rights or liabilities, either in favor of or against such corporation, existing at the time of the taking effect of this act, and no suit, prosecution, or proceeding shall be in any manner affected by such change, but the same shall stand or proceed as if no such change had been made; provided, that where a different remedy is given in this act, which can be made applicable to any rights existing at the time of its passage, it shall be deemed cumulative to the remedies before provided, and may be used accordingly.

SECTION 38. Any municipal corporation which, under its former organization, held or exercised any power or duty, in ordering or directing the election of justices of the peace, constables, or other township officers, shall continue to hold and exercise such power and duty until otherwise provided by law.

SECTION 39. Any municipal corporation, in which is vested any power of appointing officers of supervision or control of any literary, charitable, or benevolent institution, shall continue to hold and possess the like power and authority in every respect.

SECTION 40. All officers, elected or appointed, of any municipal corporation shall remain in their respective offices and perform the several duties thereof until provision shall have been made therefor in pursuance of this act, and until their successors are elected or appointed, at which time all municipal offices heretofore established by law or ordinance shall cease to exist and be abolished; provided, that all such officers shall be subject to such rules and regulations touching their duties, compensation and tenure of office as the proper authority of any municipal corporation may provide. All books, records, papers, moneys and properties of every kind belonging to any municipal corporation, in the possession of any officers, clerks or employes, shall be delivered by them to the appropriate officers to receive them.

SECTION 41. All by-laws, ordinances, and resolutions heretofore lawfully passed and adopted and not inconsistent with this act shall remain in force until altered or repealed.

SECTION 42. All acts or parts of acts inconsistent with or manifestly substituted and supplied by the provisions of this act are hereby repealed.

This act shall take effect and be in force from and after its passage.

I have taken much longer than I expected and I thank you very much for your attention.

Mr. Price, of Athens: In an elective office, can you require by law certain qualifications; in other words, you take our courts, there is no qualification, as I understand it, for supreme judge, none for circuit, none for common pleas and none for probate; you there say a man elected to a police judgeship shall be a lawyer?

Mr. Stewart: No, I said he should be a member of the bar.

Mr. Price: Well, that would be the same thing (laughter). Now, then, can you specify that only lawyers shall be elected to the police judgeship?

Mr. Stewart: Now, I would not want to be positive about that, but I think the judges of the supreme court, of the circuit court and of the common pleas court, must be lawyers.

Mr. Price: I thought there was no provision.

Mr. Stewart: There is no provision for the probate court, but I am quite certain there is to the other courts, a requirement that he should be a member of the bar, and I don't believe that would be held to be unreasonable.

Mr. Price: You spoke in your bill there, or in your talk about a certain section being the stumbling block in the way of some people, in regard to this being constitutional.

Mr. Metzger, of Stark: Section 11.

Mr. Price: Section 11.

Mr. Stewart: Yes.

Mr. Price: Now, what construction do you give upon that section taken in connection with the laws which now exist; in other words, suppose there were no laws on the statute books conferring powers on council, now do you say that that would be broad enough to comprehend all the duties that the council now perform in this state?

Mr. Stewart: All municipal duties; they could perform them under this section.

Mr. Price: Then I will ask you another question: It was stated this afternoon, and I presume it is true, that the supreme court has held under the word "danger" at a crossing, as stated this afternoon, a council could not pass an ordinance requiring a railroad to maintain a watchman there; how would you reconcile that construction of that law with this provision?

Mr. Stewart: Well, I would not claim, Mr. Price, that the council could pass that sort of an ordinance; that is not a municipal function, to require a railroad company to place a watchman at crossings. Let the legislature give that power to the council if it wants to do so, but it is not a municipal function; and as I said, we present to you a municipal bill for the organization of cities and villages.

Mr. Price: Well, then, the line of demarkation you draw somewhere between municipal functions and other duties cast upon municipalities in later years?

Mr. Stewart: We give in this section to the city government every municipal function which is necessary to carry on its business.

Mr. Price: Do you mean to say that all the powers which are now exercised under 1692, if that was wiped out, could be exercised under that?

Mr. Stewart: No, sir; I do not say that.

Mr. Price: Well, then, as far as the powers, the usual powers which they have now; there would have to be additional legislation to confer those powers, if the present statutes were wiped out?

Mr. Stewart: No, I don't say that.

Mr. Price: Well, what would be your position?

Mr. Stewart: You asked me about 1692; I suppose you know how many different provisions there are?

Mr. Price: Forty-three.

Mr. Stewart: I never counted them up. I say under this section they could not exercise all those powers, but they could exercise every power that is necessary for the government of the municipality, for the protection of the lives and health of its citizens, and for the general welfare of the city; every one could be exercised under this provision; it would not wipe them all out, but it might wipe out some.

Mr. Price: Will you enumerate some of those powers which you think they could exercise?

Mr. Stewart: I don't believe I would attempt to do that, Mr. Price. I will frankly say to you I haven't analyzed it down to that point; but whatever is necessary to preserve the health, lives and property of the citizens — you know what this would embrace; whatever is necessary to preserve good order — all those things can be done under this provision of the statute.

And in my judgment it is always dangerous to enumerate powers, for the very reason that when you get through, you come here the very next session and say we omitted the very one we wanted, and we will have to have another act. I say the danger is in enumerating.

Mr. Cole, of Hancock: Why do you provide for a constitutional municipal convention for the organization of city government, and then proceed in your bill to give the form of government; in other words why don't you permit the largest degree of home rule and allow the constitutional municipal convention to say whether or not there will be a mayor, council or police court, or officers to fill the different functions of government?

Mr. Stewart: Well, assuming, of course, that that question is asked in all seriousness, I would say in the first place that because I believe in home rule, it is not necessary for me to believe that the legislature cannot provide to any extent for the organization of a city or a village. I believe it can do so. I believe it can provide for the organization of cities and

villages, and we say in this bill that they shall have a mayor, and a city council and a police judge. Experience has taught that in the government of municipalities, there must be three departments, legislative, executive and judicial. That is conceded by everybody. It is further conceded by everybody that the mayor is the representative of the executive, the council of the legislative, and the police judge of the judicial; therefore, we go this far in this bill, to provide so much of an organization for each city and village as the consensus of opinion has held to be absolutely necessary in every city and village — that which every city and village must have, and there is no dispute, no question, between students of this science upon that subject; therefore we make that provision and then we leave it to the city to determine the balance of it.

Mr. Cole: Then the chief difference between that theory and that of the gentlemen who spoke upon the code this afternoon is to home rule needs as well in degree?

Mr. Stewart: As I said, it is a question of policy, nothing else. I believe that home rule under the constitution ought to be given to the people of the municipality to a very large extent, but I do believe that it is right and proper for the legislature to say to the city and village, as it is found these offices are important and necessary, in the organization of your affairs, we will provide these offices and say you shall have them.

Upon the other side, as the argument this afternoon developed — and when I say the other side I mean the gentlemen who are advocating the bill which was sent to your body with the message of the governor — it is said we will give you all the home rule that is possible under the constitution but we claim that to give to the citizens of the municipality the right to determine who its administrative officers shall be is unconstitutional, but for the legislature to establish a board in that city which shall determine who the administrative officers shall be, is perfectly constitutional.

Now, I say, as I said in the beginning, Mr. Cole, it is simply a question of policy; it is not constitutional law, and nobody can make it so: and our policy we believe to be so much better than theirs we have a right to call ours "Home Rule" and theirs some other kind of rule.

Mr. Cole: There is one other question, and that is relative to the difference between legislative power and the power of municipal ordinance. Now, to illustrate my idea: We pass an act here to transfer funds; that is an act of the legislature and is called a law; we provide here that a council can transfer funds, the council does that by ordinance;

now what is the difference between legislative power, law making power, and the power to make an ordinance; the same act, the exercise of the same power, which gives in one the legislative power, and the other municipal regulation? That was discussed to some extent this afternoon.

Mr. Stewart: They discussed it to this extent; to the extent that they expressly withdrew any objection which they had made to the State Board of Commerce bill on the ground that it delegated legislative powers. And why? Because they had taken time to study that question and they found that since cities were established, the legislative bodies had always had the power of legislation, and it was not considered a delegation of legislative powers to put in the hands of a city council the power to pass any act that concerned the municipal affairs.

Now it is well understood what is legislative power. It is the power to make an act and repeal a law, as defined by Judge Cooley, but when Judge Cooley says that and says the legislature cannot delegate it, he expressly grants the delegation of that power to municipalities and says they have always had that power, because they cannot be conducted without the power of local regulation.

Mr. Guerin, of Erie: I would like to ask you whether or not you consider the governor's code, so-called, a measure which if passed would be constitutional?

Mr. Stewart: Well I would not stand before this body and say that I had such a poor opinion of the gentlemen who were engaged in that work, as to say they would draw an unconstitutional bill. (Suppressed laughter.)

Mr. Willis, of Hardin: Are we to understand, then, that it is your contention that diversity in municipal government is a good thing, as long as that diversity is brought about by the action of the people themselves?

Mr. Stewart: Mr. Willis, will you let me answer that question by telling a little story?

Mr. Willis: Yes, certainly.

Mr. Stewart: There is a gentleman going to follow me who is to talk about this code which we have.

Once we were trying a case over in Preble county, and there were two lawyers in the case and one of them got upon his feet and stated the grounds of error which they claimed existed, and in the course of his argument and his statement of the points he made one point which attracted my attention, and I said to him, "Judge Gilmore, do you claim

there is any error in that decision?" Well, he started in and tried to explain what he meant. "Come back, this one point is what I want to call your attention to; I want to know if you think there is any error in that point?" "Well, now," he says, "That is Mr. Milliken's point; and you let him talk about it." (Laughter.)

Now, Mr. McMahon is much better qualified and more able to answer that question than I am, because he has given the subject close study—he has devoted years to the subject of these questions of municipal government and municipal science, and you know he is an able lawyer, and he is able to tell you all about it, so you may ask him to explain.

Mr. Price: Your—

Mr. Stewart: I don't want to have to tell Mr. Price that story now. (Laughter.)

Mr. Price: Your contention is that municipalities under common law have councils and had legislative powers before the state of Ohio was created?

Mr. Stewart: Sure; before America was discovered.

Mr. Price: And when the first constitution was adopted, even away back in the early days, those powers were not taken from municipalities; is that so?

Mr. Stewart: I don't want to answer that question. I say they have them. I thank you.

REMARKS OF HON. HARRY H. McMAHON.

Mr. Chairman and Gentlemen of the Committee: It will become apparent, I think, very soon, from the nature of this argument, that I will have to confine myself to manuscript, and I know that I will save your time as well as mine by confining myself closely to the manuscript.

If you have any questions which you wish to ask when I finish I shall be very happy to try to answer them.

A CONSTITUTIONAL ARGUMENT

In Defense of the

OHIO STATE BOARD OF COMMERCE BILL.*

To Provide for the Organization of Cities and Incorporated Villages.

By H. H. McMAHON, of the Columbus Bar.

INTRODUCTION.

On the 10th day of August last, there were published in the leading newspapers of the state the essential features and provisions of a "bill to provide for the organization of cities and incorporated villages," prepared for and proposed by the Ohio State Board of Commerce.

The purpose of that publication was to arouse the interest of the people, to impress upon them the importance of the legislative problem before the General Assembly, to secure their consideration of the problem and to draw the criticisms of the friends and foes of the proposed measure. It is hardly necessary to say that that purpose has been accomplished. The people of Ohio are considering the problems of the organic law of municipal corporations to-day as no other people ever have done.

While the purpose of the publication of the measure has been accomplished, the purpose of its framing is still to be accomplished. The Ohio State Board of Commerce is composed of business men, representing the combined business interests of Ohio, both small and great. It labors to advance the interests of all the people as distinguished from the selfish interests of any individual, individuals or class of individuals. Its participation in public and governmental affairs looks only to an improved citizenship and the advancement of the general welfare, without reference to party politics or partisan advantage. It has no axes to grind, no theories to establish.

Some six years ago the Ohio State Board of Commerce began an agitation for the reform of the laws providing for the organization of cities and villages. As a direct result of that movement, the General Assembly, on April 25, 1898, passed an act authorizing the Governor to appoint a commission to revise the Municipal Code of the state. In pursuance of that act, a commission was appointed which prepared a revision of the Municipal Code.

Upon careful examination, the revised code, so prepared, proved to be unsatisfactory, and the State Board of Commerce not only refused to support the measure, but had a substitute bill prepared, under the supervision of its own legislative committee.

During the last regular session of the General Assembly a revision of the code commissioner's revised code was urged for passage, by a committee of the State Bar Association. To this measure, also, the State Board of Commerce refused its support.

In the present emergency, after years of study of the problem, the State Board of Commerce has had its bill providing for the organization of cities and incorporated villages entirely rewritten and revised.

A bill prepared under such circumstances and proposed by such an organization cannot be dismissed from consideration by the opinion of one man or a dozen that its provisions are unwise or unconstitutional.

The measure is offered as the best solution of the municipal problem which has been suggested. It is not claimed that it is perfect, but it is believed that it is a practical solution of the problem, and it is insisted that the measure in all its provisions is strictly constitutional and valid.

The objections urged to the bill are that it would be unconstitutional; that it would produce diversity instead of uniformity in our system of municipal government; and that the plan proposed is visionary, experimental and impracticable. It is proposed to take up these objections and to consider them fully and carefully.

It is not my purpose to enter into a discussion of all these questions at this time. I shall confine my remarks this evening to the single question of constitutionality. The necessity for diversity in our municipal system is being emphasized and proclaimed by abler men. The wisdom and practicability of self-government should need no defense within these walls. All are agreed that home rule should be granted to the municipalities in as large a measure as the constitution will permit. It is clearly apparent that the State Board of Commerce bill does grant a

larger measure of home rule than the code transmitted to you by the Governor.

Is the State Board of Commerce bill constitutional?

Before I proceed to the consideration of that question, I wish to say there has been a good deal of shifting by the opponents of this bill. At first the attorney general's office issued an opinion that it is unconstitutional as a delegation of legislative power. I understand that the Special Counsel of the attorney general's department withdrew that statement this afternoon. An attack was made on the constitutionality of the bill, at Cedar Point a few days ago by Judge King, upon the question of the uniform operation of general laws, and two or three other points were suggested by Judge King at that time. This argument is prepared to cover the whole question, and some of it may seem to be knocking down a straw man, especially since the special counsel of the attorney general has withdrawn his opinion on the subject of delegated power, but the treatment of that subject is necessary to a complete understanding of the question.

The constitutional mandate is that "the General Assembly shall provide for the organization of Cities and Incorporated Villages."

The proposed measure does provide for the organization of cities and incorporated villages.

It confers broad powers of self-government upon the inhabitants of all municipalities now existing or hereafter incorporated and constitutes them bodies politic and corporate.

It expressly provides that all cities and villages hereafter created shall be organized under its provisions and that all cities, villages and hamlets heretofore incorporated shall reorganize under its provisions.

It prescribes the method of organization to be pursued, namely, by the adoption of a municipal constitution by a municipal convention. It prescribes the manner of electing delegates to a municipal constitutional convention and defines their powers and duties.

It prescribes a form of organization by requiring that there shall be a council, or legislative body, a mayor, or executive head, and a police court or mayor's court for the exercise of judicial powers. Provision is thus made for each of the three recognized departments of government.

Each municipality is further expressly empowered to frame its own scheme of administrative organization and to create such further offices as may be necessary for the good government of the municipality and the exercise of its corporate powers.

It provides that all the elective officers created by the act, in the municipal constitution or by ordinance shall be chosen by the electors of the municipality.

It provides that the rights, duties, powers, compensation, terms, methods of selection, etc., of such officers, together with the limitations upon their rights and powers, shall be fixed in the municipal constitution or by ordinance, when the same are not defined and prescribed by general laws.

While granting general powers of a broad nature, it makes their exercise subject to such limitations and restrictions as are or may be prescribed by general laws.

Full and complete provision is made for the organization of cities and villages. It is believed that no possible emergency has been left unprovided for.

If the measure is invalid and unconstitutional it must be because some of its provisions contravene the constitutional limitations or violate some established principle of constitutional law.

The points of attack suggested are:

1. That the adoption of a municipal constitution by a municipal convention, as provided in this act, would constitute a delegation of legislative power;
2. That the power to create municipal offices and to prescribe the duties of such offices would be a delegation of legislative power;
3. That the power to adopt constitutions of variant terms and to create variant schemes of administrative organization with different officers would have the effect of producing diversity in the form of organization and would therefore render the law invalid as a violation of the constitutional provision that laws of a general nature must have a uniform operation.

DELEGATION OF LEGISLATIVE POWER.

The constitution of Ohio, Article II, Section 1, provides that "the legislative power of this state shall be vested in a General Assembly."

There is a well established principle of constitutional law, which is sometimes crudely and generally stated thus, that legislative power can not be delegated.

The opponents of the home rule principle urge against the validity of the proposed measure that it is unconstitutional because it involves the

delegation of legislative powers. A very little consideration will expose the weakness of the objection.

The history not only of Ohio, but of all states and countries, at least, where the English law is in force, shows that the power of local legislation has always been delegated to cities and villages. No municipal corporation act has ever been passed either in Ohio or in any other state in the Union, which did not delegate legislative power. No act providing for the organization of cities and villages can be framed which does not delegate legislative power. While a distinction is sometimes drawn between the power of ordinance and the power of legislation, the power of ordinance is in fact nothing more nor less than the power of local legislation which is delegated to municipal corporations and it is so recognized by the courts.

The very nature of a municipal incorporation involves the power of local legislation. The power to create municipal corporations necessarily implies the power to confer upon them powers of local legislation. The constitutional command to provide for the organization of cities and villages is a command to invest the inhabitants of such municipalities with the power of local legislation.

From the beginning the state of Ohio has vested its legislative power in a General Assembly and the General Assembly has always delegated the power of local legislation to incorporated cities and villages. Our Supreme Court reports are full of decisions sustaining the validity and enforcing acts of local legislation passed by municipal councils. It may be safely asserted that without the delegation of legislative power our governmental system could not be operated for a day.

In view of these considerations, it hardly seems necessary to cite authorities and yet there may be some whom authorities will aid.

AUTHORITIES CITED AND QUOTED.

Judge Cooley, in his authoritative work on "Constitutional Limitations," page 226, says:

"It has already been seen that the legislature cannot delegate its powers to make laws; but fundamental as this maxim is, it is so qualified by the customs of our race and by other maxims which regard local government that the right of the Legislature, in the entire absence of authorization or prohibition, to create towns and other inferior municipal organizations, and to confer upon them the powers of local government and especially of local taxation and police regulation usual with

such corporations, would always pass unchallenged. The legislature in these cases is not regarded as delegating its authority, because the regulation of such local affairs as are commonly left to local boards and officers, is not understood to belong properly to the state; and when it interferes, as sometimes it must, to restrain and control the local action, there should be reasons of state policy or dangers of local abuse to warrant its interposition."

As long ago as 1846, the power of towns corporate to make ordinances and by-laws was directly attacked as an unconstitutional delegation of legislative power because, by the constitution of Ohio, all legislative power was vested in the General Assembly and the power to make ordinances and by-laws was sustained in the case of *Markle v. Akron*, 14 Ohio 586.

In the case of *Bliss v. Kraus*, 16 O. S. 55, the Supreme Court said: "The power of creating municipal corporations necessarily implies authority to confer upon them such police powers as may be necessary for their internal government."

Cases might be cited, ad nauseam, upholding the constitutionality of the power of making ordinances and by-laws, which is the power of local legislation.

In *People v. Hulbert*, 24 Michigan 88, Chief Justice Campbell said:

"Incorporated cities and boroughs have always, both in England and America, been self-governing communities within such scope of jurisdiction as their charters vest in the corporate body. According to the doctrine of the common law, a corporation aggregate for municipal purposes is nothing more nor less than 'investing the people of the place with the local government thereof.'"

It is to be regretted that every citizen of Ohio cannot read the opinions, especially those of Judge Cooley in the cases of *People v. Hulbert*, 24 Michigan 88; and *People v. Detroit*, 28 Michigan 228.

Probably as good a statement of the rule as can be found in any of the reports, is that made by the Supreme Court of Illinois, in the case of *Covington v. East St. Louis*, 78 Illinois 548:

"The general assembly has the power to delegate legislative authority incident to municipal governments to cities, but this can only be done by general law. When, however, it is done by such law, the constitutional mandate is fully complied with; and the ordinances to be adopted by different municipalities under the powers so conferred, may be as

varient in their terms as the varying municipal necessities or sense of public policy, in those who exercise the legislative authority, may require."

ONE PHASE OF THE UNIFORMITY QUESTION.

The latter portion of this ruling has a direct bearing upon the question of the uniform operation of general laws, and the rules stated, both as to the delegation of legislative power and as to uniformity, are in perfect harmony with the decisions of the Supreme Court of Ohio. In Ohio, as well as in Illinois, municipal regulations made under grants by general laws of permissive powers may be as varient in their terms as the municipalities may desire. The very purpose of permissive and discretionary powers is to permit and produce diversity in municipal regulations so as to suit them to varying conditions. This is expressly held in *Burkholter v. McConnellsville*, 20 O. S. 308, where the Supreme Court says:

"It is no ground of objection to the validity of prohibitory ordinances, thus authorized, that the general laws of the state do not extend the prohibition to all parts of the state. Morality and good order, the public convenience and welfare, may require many regulations in crowded cities and towns, which the more sparsely-settled portions of the country would find unnecessary."

EXTENT OF THE POWER OF LOCAL LEGISLATION.

Another question demands attention, and upon that point it were well that the language of the Supreme Court, in the above cited cases of *Burkholter v. McConnellsville*, were brought to the attention of every citizen of the State, as well as every member of the Legislature:

"It is for the legislative discretion to determine within the limitations of the Constitution, to what extent city or town councils shall be invested with the power of local legislation."

In other words, the Legislature may and must determine how far the inhabitants of the municipalities of this State shall be entrusted with the management of their own local affairs. The powers of home rule may be as broad as the legislature is willing to confer upon the people.

Upon the question of the extent of the legislative power which may be delegated by the General Assembly to municipal corporations, the cases of *Hill v. Higdon*, and *Malloy v. Marietta*, are interesting and instructive and sustain the broad rule stated in *Burkholter v. McConnellsville*.

ville. In *Malloy v. Marietta*, 16 O. S., 636, it was held, that, although the constitution requires that the power of assessment delegated to cities be restricted, it was, nevertheless, competent for the General Assembly to delegate to cities an unlimited measure of power of assessment, if only it prescribed a mode of assessment. It was further held that a provision, in the act granting the power, requiring the concurrence of two-thirds of the members of council to order an assessment was a sufficient compliance with the constitutional requirement that the power of assessment be restricted. The court quotes with approval the language of Judge Ranney, in *Hill v. Higdon*, 5 O. S., 248, with reference to the same matter, that "a failure to perform this duty may be of very serious import but lays no foundation for judicial correction."

The Supreme Court of California, in *Ex parte Shrader*, 33 Cal. 297, states the rule in these broad terms: "It is apparent that the Legislature could confer power upon the board to pass the order if it could have enacted it directly in the form of a statute in the first instance."

THE RULES AS TO DELEGATION OF LEGISLATIVE POWER.

The rules of law governing the delegation of legislative power to municipal corporations may be summed up thus:

1. The General Assembly has the power and right to delegate to cities and villages legislative authority incident to municipal government.
2. It is for the legislative discretion to determine, within the constitutional limitations, to what extent the power of local legislation shall be so delegated.
3. Such a delegation of powers to cities and villages can be made only by general laws. When, however, it is done by such laws the constitutional mandate is fully complied with.
4. The regulations and by-laws to be adopted by different municipalities, under the power so conferred, may be as varient in their terms as the varying municipal necessities or sense of public policy, in those who exercise the local legislative authority may require.

These principles are well established and are supported by Judge Cooley in his work on "Constitutional Limitations," by Judge Dillon in his work on "Municipal Corporations," by all the leading authorities on both subjects, and by most if not all of the higher courts, including the Supreme Court of Ohio.

The Supreme Court of Ohio seems to go beyond the rules above stated by its intimation that a failure on the part of the General Assem-

bly to restrict the delegated power in accordance with the constitutional mandate would lay no foundation for judicial correction.

It is apparent that these rules will permit the General Assembly to delegate to cities and villages a power of local legislation broad enough to provide for their own schemes of administrative organization, varying the organizations as the municipal necessities may require.

POWER TO CREATE MUNICIPAL OFFICES.

It is universally recognized that municipal corporations may be invested with the power to create municipal offices. Probably every municipal charter ever granted in Ohio contained provisions granting the power to create some municipal offices, prescribe the duties and fix the compensation.

Revised Statutes of Ohio, Sec. 1710, provides that: "The council may provide for the appointment or election by the electors of the corporation, wards or districts, as the case may require, of such other officers as it may deem necessary for the good government of the corporation and the full exercise of its corporate powers."

R. S. Sec. 1712, provides that: "Officers whose powers and duties are not defined in this title, shall perform such duties and exercise such powers as may be prescribed by ordinance."

R. S. Sec. 1716, provides that: "Officers of municipal corporations who are not prohibited from receiving compensation or whose compensation is not provided for by law, shall receive such fees or compensation for their services as council may prescribe."

These provisions have stood in our general laws unchanged for more than thirty years. They have always been recognized as proper delegations of legislative power. These powers have been continuously exercised and their validity has not been questioned. He who attacks the constitutionality of such a delegation of power after a century of acquiescence, in Ohio and other states, must support his attack by something stronger than mere assertion.

The adoption of a municipal constitution, such as is provided for in the bill under discussion, is nothing more nor less than the exercise of the power of local legislation, the adoption of municipal regulations. The grant of such powers cannot be successfully attacked.

UNIFORM OPERATION OF GENERAL LAWS.

Article XIII, Sec. 6, of the constitution provides that "The General Assembly shall provide for the organization of cities and incorporated villages by general laws."

Article XIII, Sec. 1, requires that the General Assembly shall pass no special act conferring corporate powers.

Article XII, Sec. 6, requires that all laws of a general nature shall have uniform operation throughout the State.

The proposed measure, if enacted, would be a general law and would have a uniform operation throughout the State.

The provisions for the organization of cities apply alike to all cities and the provisions for the organization of villages apply alike to all villages. No attempt is made to distinguish between cities in any manner; nor is any attempt made to distinguish between villages. Each city is granted the same powers, and the same limitations upon the exercise of those powers is imposed upon each. Each city is required to pursue the same method of organization and the same limitations upon the form of organization are prescribed for each. Absolutely no distinction is made between cities. The same is true in regard to villages. We have already seen that municipal regulations, authorized by general laws, may vary in their terms according to the municipal necessities, without in any way affecting the uniform operation of such laws.

The constitutional limitations as to general laws and their uniform operation are therefore, strictly complied with.

In the mad desire to give the people the impression that the measure under consideration is unconstitutional various provisions of the constitution have been dragged into the discussion for the purpose of producing confusion.

CONDITIONAL LEGISLATION.

Article II, Sec. 26, provides that: "All laws, of a general nature, shall have a uniform operation throughout the State; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except as otherwise provided in this constitution."

We have already seen that the adoption of municipal by-laws and regulation of variant terms does not constitute a violation of the first part of this section. It is clearly apparent, also, that the latter part of the section has no bearing upon the question. The measure under considera-

tion is a direct and positive enactment of a general nature, a complete law, which takes effect from and after its passage. There is not a single conditional provision in it. If enacted its taking effect would not depend upon the approval of any other authority than the General Assembly.

THE ANALOGY OF PRIVATE CORPORATIONS.

A fatal inspiration led some one to bring into the discussion Section 2 or Article XIII, which provides that: "Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed," and to call attention to the similarity between private corporations and municipal corporations. It would profit little to discuss the well-established similarities and differences between these two classes of corporations. It may, however, be of interest to call attention to the fact that the general statutes of Ohio go no further in the matter of providing officers for private corporations, than to require them to have a board of directors, a president, secretary and treasurer. The statutes do not fix the number of directors absolutely nor do they attempt to define and prescribe all the duties of the officers. The members of each corporation are permitted to adopt regulations and the directors to adopt by-laws. Even for a great railway system no other officers are required by statutes. The whole administrative and operative organization of a railway company is framed, adopted and amended by the company without direction or interference from the Legislature. It will not be contended that the power is invalid or that any serious confusion or danger arises out of the fact that railway companies create, define and regulate such positions as general manager, superintendents, general passenger and freight agents and auditors, as well as the positions filled by hundreds of subordinate employes. That municipal corporations exercise two classes of powers is well recognized. In the one aspect, the municipal corporation represents the State—discharging duties incumbent on the State; in the other, the municipal corporation represents the pecuniary and proprietary interests of individuals. The distinction is fully discussed in *Western College v. Cleveland*, 12 O. S., 375. The comparison is a happy one, but not for the critics of the measure under consideration. For them the inspiration is fatal. Broad powers of regulating their own affairs are granted to private and quasi public corporations. Why can not such power be granted to public corporations as well?

CONCLUSION.

In conclusion, let me say that the constitution, by restricting the general assembly to the enactment of general laws in providing for the organization of cities and villages and by its requirement that general laws shall have a uniform operation, thereby clearly restricted the control of the general assembly over municipal affairs. It did not limit the power of control. It must be admitted that municipal corporations can exercise only such powers as are delegated to them. The constitution, however, does place limitations upon the mode of exercising that power. It must be done by general laws, and general laws must have a uniform operation.

With the prohibition of special legislation in regard to municipal corporations, the delegated power of local legislation becomes the natural supplement to general laws. The delegated power of local legislation has always been used in Ohio. It was in the contemplation of the framers of the constitution, as is evidenced by the requirement in Section 6, Article XIII, that certain specified delegated powers of local legislation should be restricted; and that provision is a strong intimation of the intention of the framers of the constitution as to how general laws should be supplemented. That intention is further evidenced by the fact that the act of May 3rd, 1852, made liberal use of the delegated power of local legislation for the purpose of introducing diversity into the municipal system.

It is true that the framers of that act adopted the system of classification. That was done nominally for the purpose of introducing diversity, but really for the purpose of extending the possible limits of uniformity, and so extending the control of the general assembly over municipal affairs. But even with this expedient they did not deny nor neglect the power of local legislation as a means of supplementing general laws.

Classification is now discarded as a dangerous, if not an unconstitutional, expedient. If the constitutional mandate that provision for the organization of cities and villages must be made by general laws is to be obeyed and the American constitutional principle of the separation of legislative and executive functions is to be conformed to, then the necessary diversity in the municipal system must be effected through the exercise of the delegated power of local legislation, the natural and logical supplement to general laws.

I repeat "If the constitutional mandate that provision for the organization of cities and villages must be made by general laws is to be obeyed and the American constitutional principle of the separation of legislative

and executive functions is to be conformed to, then the necessary diversity in the municipal system must be effected through the exercise of the delegated power of local legislation, the natural and logical supplement to general laws."

General laws of uniform operation cannot go far into the details of administrative organization. Absolute uniformity is impossible. There is an absolute limit beyond which uniformity cannot go. That is the ability of the smallest city to support the uniform administrative system. The limit of reasonable uniformity is much sooner reached. The General Assembly under the limitations of the constitution can not perfect and complete the details of the administrative organization. The power to accomplish that end must be vested in some authority.

That end is accomplished in the measure under consideration by the exercise of the delegated power of local legislation. As we have seen, the power has always been recognized as valid and constitutional. The extent of the power and the mode of its exercise is to be determined, within the constitutional limitations, by the legislative discretion.

General laws must have a uniform operation, but that constitutional limitation (as we have seen) does not apply to nor limit the delegated power of local legislation.

The delegated power of local legislation is valid. It is efficient. It is also sufficient if the legislative discretion will give it the extent asked for.

The State Board of Commerce bill grants a very large measure of home rule. There is no valid constitutional objection to its provisions. If you fail to grant the municipalities of Ohio this measure of home rule, it must be because, and only because, you are not willing to trust the people.

Mr. Guerin: I would like to ask Mr. McMahon a question. I would like to have you tell the purpose of your municipal constitutional convention, the real purpose.

Mr. McMahon: I think the real purpose is pretty well set forth in the provisions of the bill; I don't think I can state all of them concisely.

Mr. Guerin: I mean the general purpose, if you will pardon me?

Mr. McMahon: The fundamental purpose of the municipal constitution is to provide for diversity in the municipal system, to provide a method by which each municipality — the people of each municipality through their representatives — may create such an administrative organization as is suited to the needs of that municipality.

Mr. Guerin: Let me ask you if it is not proper to provide for the organization of the city or village? Is it not a function to provide for the organization of a city or village the same as a board of directors of a corporation, who meet and elect their officers and make their by-laws — and they do that in organizing their board; now this convention organizes that city or village?

Mr. McMahon: This convention provides the administrative offices that are necessary, and where the law does not fix the duties of officers, it fixes the duties and terms and salaries of officers, and in that way I should say that your statement is a proper general statement in regard to what they are to do.

Mr. Guerin: But they are really to organize the city or village?

Mr. McMahon: That is the method of organization; that is part of the organization; of course the people of the village or city elect officers for certain elective places.

Mr. Guerin: Pursuing that a little further, if we took the general law which you propose, it would be impossible for any municipality in this state to organize itself until after they had held this constitutional convention, and that convention had provided the organization of that city or village by carrying out the provisions of your law.

Mr. McMahon: The bill says that all existing municipal corporations shall reorganize under the act, and that all new corporations shall organize under the act.

Mr. Guerin: Yes.

Mr. McMahon: Yes?

Mr. Guerin: Now, going a little further, if the constitution of Ohio does not provide in general that the general assembly shall provide by general laws for the organization of cities and villages —

Mr. McMahon: I believe the language is that the general assembly shall provide for the organization of cities and incorporated villages by general laws.

Mr. Guerin: Another question and I will sit down. Is there any dispute between you and those who have been working on what is known as the Governor's code, as to the authority of the legislature — that is the constitutional authority — to delegate to the councils of cities and villages the right to pass ordinances?

Mr. McMahon: I am not able, Mr. Guerin, to tell what position the framers of the governor's code took on that matter. They attacked

our measure as being a delegation of legislative power, saying you could not delegate in any case.

Mr. Price: Why create the constitutional convention at all to do that; why not leave to the council?

Mr. McMahon: That is a question, Mr. Price, of policy, absolutely; as far as the constitution of Ohio is concerned, the power to create the administrative organization of any city or village might be left to the council. The question of having a constitutional convention for that purpose is a question of policy.

Mr. Price. I want to ask you another question: Do you accept the ordinary rule as laid down that municipal power must be conferred by the legislature before it can be exercised?

Mr. McMahon: I take it to be a general rule that municipal corporations can exercise no powers except such as are conferred upon them by the legislature. In other words, I don't think; personally, I don't think that the theory of inherent and indestructible powers of municipal corporations is good or would hold in the courts of Ohio or of the of the other states of this Union.

Mr. Comings: There is one citation from a court decision, one of the Michigan courts —

Mr. McMahon: State vs. Hulburt.

Mr. Comings: Which you read. Every corporation has the power to legislate in so far as its charter may permit — that, perhaps, is the substance of it.

Mr. McMahon: Incorporated cities have always been self-governing within such scope of jurisdiction as their charter vests in the corporate body.

Mr. Comings: Well, then, is it not true that the charter of the cities of the state of Ohio are vested in the general laws as enacted by the legislature?

Mr. McMahon: The charter of every municipal corporation is the law, and if your body should pass this act and make it law this would be the charter of every municipal corporation in the state. There is no idea of letting municipal corporations, through municipal conventions, frame their own charters; they frame simply a subordinate municipal constitution, which is a body of more or less permanent municipal regulations or ordinances, simply an exercise of local legislative power.

Mr. Cole: The object of a uniform law, as I understand it, was to do away with the confusion of special branch of corporate power

which was permissible under the former constitution of Ohio; is that correct?

Mr. McMahon: Mr. Cole, it is pretty hard to state what the object of men was fifty years ago, but I say the object in a general way was to get rid of special legislation.

Mr. Cole: And the classification of cities and villages?

Mr. McMahon: Well, I don't know as I should say that it was classification before that time; properly speaking, each municipal corporation in the state was governed by a special charter; there was no classification at all.

Mr. Cole: Then the object of this uniformity clause in our present constitution was to do away with that condition. Will not the bill which you propose here lead again to a worse condition than existed under the first constitution of Ohio?

Mr. McMahon: That question is worthy of a serious answer. I say to you that it is not conceivable that this bill will lead either to confusion or danger. Diversity in the municipal system is absolutely necessary. It is so necessary that one of the senators from this state has said publicly that it is absolutely impossible to govern the cities of this state under general laws — that there must be diversity in the municipal system.

There has been a good deal of what, if I may be permitted, I would call "Tommy rot" said about the possibility of having from fifteen hundred to two thousand different forms of organization in this state.

Any gentleman who will stop and seriously think about that matter knows that that statement, which has been repeated several times in public, is absolutely ridiculous, and that the man who makes the statement and urges that for consideration says in so many words, that "The people of Ohio are fools or children; that they do not know what they are doing."

The act as framed requires the three general departments of government. It permits variations in the administrative organization; it provides that the form of administrative organization that is adopted shall be given in a municipal constitution and shall have a certain permanency and stability.

And in answer to Mr. Price's question of a moment ago, the reason — one of the reasons — why that power is not given to council in this act is just for the purpose of getting a certain stability and permanency in the form of administrative organization. Let the people say for

themselves what their municipality needs, and let them put that into a form that shall have a certain stability and permanency.

Now in creating that form of organization it is not conceivable to me — and I think that if you stop to think about it, it is inconceivable to you — that the people of the municipalities of this state, who have been going along under a municipal system which provides for general uniformity in the form of administrative organization, will start in and make any ridiculous or visionary changes.

Mr. Cole: There is just one other question. I admit that it may be necessary to have more classes of cities than we have under the present laws in the cities and villages, but that necessity does not make it constitutional. Well, now, this legislature can pass no act based upon the classification of cities; the effect of your bill would be a number of classes of cities, different forms of government; as I understand it, it would lead to that confusion. Well, now, would it be constitutional for this legislature to grant to a municipality a power to do a thing which is unconstitutional for it to do itself?

Mr. McMahon: I should like to ask you what you mean by classification of cities?

Mr. Cole: Well, I have reference to the classification we have at the present time.

Mr. McMahon: Well, what is the essence of classification?

Mr. Cole: Based upon the number of population to a great extent.

Mr. McMahon: Is there anything which provides between the different cities in regard to their —

Mr. Cole: My contention is, Mr. McMahon, that the constitutionality would be tested; that that had been declared unconstitutional altogether, upon its being based upon population; that this uniformity clause struck at the confusion in municipal government; and your bill will permit of just such confusion and chaos in my opinion, and now if such a bill as that, if such a condition of things is unconstitutional for this legislature to bring about, how can you make it constitutional by granting that power to a municipality and permit it to do it?

Mr. McMahon: I mean to say that the Supreme Court — I am not ready to go as far as you go in your statement, I am not ready to say that the Supreme Court has said that classification is unconstitutional — it has evaded that question, and has been unwilling to give a direct answer to the question.

I have a suspicion that if this General Assembly should pass an act which classified cities, which provided an automatic method for cities passing from one class to another, and that if such an act were taken to the Supreme Court, the Supreme Court would sustain its constitutionality. That is my opinion as to what the Supreme Court would do; but I want to say, so far as I am personally concerned, that I don't think it would be constitutional. I want to say to you that the question of classification of cities depends on one thing and one thing only. Classification depends upon the grant of corporate powers. When the constitution demands uniformity in regard to municipal corporations it demands uniform powers. If every distinction, every difference, that is made between municipalities in an act constitutes classification, then I do not hesitate to say that Mr. Ellis' bill is unconstitutional. I say further that if the fact that the general law passed, permits and creates diversity in the form of organization, in the administrative organization of cities, if that result makes a bill unconstitutional, then I do not hesitate, without a single qualification, again to say that Mr. Ellis' bill is unconstitutional, and that the governor has transmitted to you, on that statement of the law, on that view of the law, the governor has transmitted to you a bill which is unconstitutional; but on this point I am satisfied that neither bill is unconstitutional.

Mr. Price: I don't believe that Mr. Cole understands the contention as I do and I want to ask you a question to see whether I am right or not: Is it your contention that the powers; do you contend that the powers; do you say that the powers of cities or of all cities must be conferred by uniform laws, and all to the same extent?

Mr. McMahon: Yes, sir. I take it that under the ruling of our Supreme Court absolutely the same powers must be conferred upon the cities, each and all.

Mr. Price: And you create a police court by a uniform law?

Mr. McMahon: Yes.

Mr. Price: You confer the executive power on the mayor by uniform law?

Mr. McMahon: Yes.

Mr. Price: Your contention, then, that the distribution or the segregation, if you please to call it so, of the executive powers of a municipal corporation, if the municipalities wish to segregate or separate it, can be done by the council or by your constitutional convention?

Mr. McMahon: What I mean to say, Mr. Price, is that all powers conferred upon municipalities must be conferred by general laws of uniform operation. Now, we propose to confer upon each city exactly the same local legislation, and, in the exercise of the delegated power of local legislation, they can do things which you can't do.

Mr. Price: In other words, you must lodge your power in the council or in your constitutional convention?

Mr. McMahon: You can lodge it in a convention and give part of it to a constitutional convention and the balance to council.

Mr. Price: If I understand it, to put it in another term, you claim—or you may not, but some claim that advocate this home rule to this extent—that the only thing that they propose or say is that the municipality can devise its own means of administering the executive side of its government after you have created the mayor?

Mr. McMahon: If you mean by that question, that it delegates the power of local legislation for creating the administrative offices and departments and bureaus that are necessary to administer its affairs, I answer the question yes; if that is what you mean, they can do that by the exercise of the delegated power of local legislation.

Mr. Price: Yes, but you do not, or do you, claim that the municipality can pass an ordinance regulating affairs without the power being expressly given them in the statutes?

Mr. McMahon: As I said a while ago, they can't do anything except exercise delegated power. I tried to answer that question a while ago.

Mr. Guerin: Preliminary to another, I want to ask you whether you have read the so-called Governor's code?

Mr. McMahon: I have read the larger part of it; I have not examined it all carefully, but I have read the larger part of it.

Mr. Guerin: I will ask you if you know the principle followed in the draft of that code?

Mr. McMahon: Well, that is a pretty hard question. I suppose you mean by principle—

Mr. Guerin: I will ask you whether there is any part of that code, which in your opinion as a lawyer, you consider as unconstitutional, if enacted into law?

Mr. McMahon: There is no part of that measure, in so far as I have examined it—I don't consider that reading a bill is examining it.

I think that to be able to express an opinion in regard to those provisions, a man must put a great deal more time on it to get it out than Mr. Ellis did to put it in; it takes longer to get it out; and if you want to know what he has accomplished you must take more time to find out than it took him to do it. Now, I say from the little examination I have made of that measure I do not believe there is anything in it which the supreme court would hold to be unconstitutional.

Mr. Guerin: As you understand that bill, it is a bill which provides the organization proper of cities and leaves the fulfilling of the organization to the people?

Mr. McMahon: It provides for the organization of cities and it leaves the power of completing and developing the administrative organization in the hands of the board of public service.

Mr. Guerin: And the people, the elective officers?

Mr. McMahon: Well, yes—

Mr. Willis: I have endeavored to formulate some kind of view of the conditions which obtained prior to 1851 and just what would exist if this bill became a law, would this be an accurate statement of the facts in the case: That prior to 1851 we had our municipalities organized under various special acts but that after this bill became a law we would have our municipalities organized under the general law that would, say, lead to different results in different localities? In other words, would the only effect be that prior to 1851 the legislation was by the General Assembly, and here it would be by a local government; is that the only difference?

Mr. McMahon: The difference would be better put in this way, I should say. It is pretty hard to make an off-hand statement in regard to a general subject of that kind. Before the adoption of the constitution of 1851, each municipality was governed by a separate law, and the laws governing each municipality were in turn supplemented by local ordinance. The constitution of 1851 prohibited the governing of municipalities by separate laws. General laws of uniform operation had to be passed or that was what the constitution said that they should pass—general laws—so that all the municipalities would be governed under the general laws.

Now the intention of the framers of the constitution must, to a large measure, be inferred from what they said. The framers of the constitution said that the General Assembly shall provide for the organization of cities and incorporated villages by general laws. But it put a further

limitation on that subject; that general laws shall have a uniform operation throughout the state. Now, as I said in my paper, absolute uniformity is impossible and the limit of reasonable uniformity is soon reached, and, as a matter of fact, there is an absolute limit beyond which uniformity cannot go and some method has to be provided for supplementing those general laws. There was in existence at that time a recognized authority; it had always been recognized as the method of supplementing the law. The constitution permitted and contemplated that the General Assembly should make use of that power, the delegated power of local legislation, and it put no restrictions upon that delegated power of local legislation which required that the municipal ordinances of Cincinnati should be in the exact terms of those of Columbus and Cleveland. It left them free to make such municipal regulations, through the exercise of the delegated power of local legislation, as the needs of the municipality should call for, or as their ideas of public policy should call for, so long as they did not conflict with any general law.

Now there is one gentleman who seemed to have an idea—at least, the way he framed questions he seemed to have such an idea—that this bill is going to permit every municipality in the state to run things generally as it sees fit. The bill will not permit such a thing unless you neglect your duties, in regard to the question of general laws. Take the question of assessments, the General Assembly can make general rules in regard to assessments as to limitations and methods of assessment, and the municipality, through the exercise of the power of local legislation, may constitutionally create an organization which shall work under all the limitations the General Assembly puts upon that power. The General Assembly is not restricted at all, and the bill does not contemplate that the General Assembly shall turn all these powers over absolutely to the municipality. Anything which can be done by a general law of uniform operation may be passed by the General Assembly and the law will affect every city or every village, as the case may be.

Mr. Denman, of Lucas: If I remember rightly, Mr. McMahan, does not the bill provide that the municipal constitutional convention shall limit the power of taxation and assessment?

Mr. McMahan: Yes.

Mr. Denman: Is not that in direct conflict with the section which provides that the General Assembly shall provide—

Mr. McMahan: I take it not, Mr. Denman. I take it that the constitution says that in delegating the power of taxation to municipali-

ties the General Assembly shall restrict that power, but the General Assembly in delegating that power does not say to the municipality, "You *must* exercise this power up to a certain limit," it says you *may* exercise the power not beyond that limit. Now the provision in this bill in regard to that question is that in the municipal constitution, the General Assembly having delegated the power of levying taxes up to 10 per cent.—I don't know what the provision is—up to 10 per cent.—that power is made large enough for the largest city in the state, but it may be too large for the smallest city of the state. Now the idea of the municipal constitution on that question is that the people of the city should say to their council how much of that power which has been delegated to them by the general assembly shall be exercised by council. It is simply putting a limitation within the limitation which the act itself provides. The act says they shall place a limit which shall not exceed so and so.

Mr. Denman: What is the object of that provision, then, if it is not to keep that to a certain limit specifically?

Mr. McMahon: The object is to keep the council to a certain and specific limit; if the people of a city of six thousand want the council to exercise power only up to a certain point, even although the general assembly has conferred that power upon the council, the people can say so.

Mr. Denman: That is, do you mean to say, Mr. McMahon, that we shall have complied with the constitution, if we require the municipal council to make the limitation, or make it ourselves?

Mr. McMahon: No, it is a pretty close question, Mr. Denman; you will remember that Judge Ranney said that the failure to place a limitation or restriction upon the powers specified would not be a ground for judicial correction; you know what that language means.

Mr. Denman: Do you think it is only directory?

Mr. McMahon: I am not going to say that; I should say it was a restriction. Judge Ranney thought it would not lay a basis for judicial action.

Mr. Willis: I am not a lawyer but I wish Mr. McMahon would explain a matter here so that a layman could understand it. I understood you to agree that under the operation of this law municipal governments would be created which would vary considerably and not be by any manner of means the same?

Mr. McMahon: The administrative organization would vary, yes sir, without question, and that is the special purpose of the bill.

Mr. Willis: Then the next question I want to ask, could a law, under which diverse governments were organized properly be said to operate uniformly? I wish you would answer that so that a layman could understand it. I want to know what you are talking about?

Mr. McMahon: Well, I can say this, and it is the simplest way I can put it, Mr. Willis: The constitution says that laws of a general nature shall have a uniform operation throughout the state. The constitution does not say that acts of local legislation shall have a uniform operation throughout the state, because they are local acts and refer only to the particular locality which enacts them. The supreme court of the state of Ohio has said that it is not necessary that the local regulations shall be the same in different cities, and you realize, I think, as a layman, that the municipal ordinances of Cincinnati and Cleveland and Columbus vary in their form and vary in their effect. There is no requirement in the constitution, nor is there any requirement of constitutional law, that demands that the acts of local legislation shall be the same. In the different municipalities they may vary as much as the municipal interests demand or as the sense of public policy in the local legislative body may think requisite.

Now that is true in regard to every element of the power of local legislation, whether it be a municipal ordinance of a criminal nature or whether it to be a municipal ordinance, or regulation of any kind, which creates offices, administrative offices. Those offices may be created by municipal regulation; the municipal regulations creating them and prescribing their duties may vary in different cities according to their municipal necessities.

Mr. Guerin: There is another question I would like to ask you: Is there anything in this bill which limits the amount of taxation by any municipality or gives to any municipality the right to borrow money?

Mr. McMahon: Yes, I should say so. I don't know whether it is in the express language but it gives them the authority to create indebtedness.

Mr. Guerin: Is there any limit to the amount of taxation in the bill?

Mr. McMahon: Yes, it says it shall not exceed a certain amount.

Mr. Guerin: What is the limit, do you know?

A Voice: The same as in the governor's bill.

Mr. Guerin: Is there a limit to that?

Mr. McMahon: Yes, there is a direct limit on the power to create indebtedness.

Mr. Guerin: Do you know what the limit is?

Mr. McMahon: You will have to ask the judge.

Judge Stewart: Ten mills in cities and five mills in villages.

Mr. Denman: I believe it does not provide for their creating or contracting debts?

Mr. McMahon: It grants the power to create indebtedness; yes, sir.

Mr. Denman: That is a different proposition from the limits of taxation?

Mr. McMahon: It limits the power of taxation and limits the power to create indebtedness.

Mr. Denman: Another question: This code uses the word "for" in the constitution in its literal or strict meaning, and it may provide any way?

Mr. McMahon: Provide for the organization simply; that is the constitution as it reads.

Mr. Denman: Then wouldn't you take it just as it reads as to limiting their power of taxation and assessment?

Mr. McMahon: Mr. Denman, when I made that remark awhile ago I simply spoke about what the supreme court said; the supreme court of Ohio has said, speaking through Judge Ranney, that if you should fail to perform that duty it would not lay a ground for judicial correction. I think that is stretching the power of the general assembly a good piece, but that is what Judge Ranney said.

Mr. Guerin: I move that we do now adjourn.

Motion seconded and carried, and chairman Comings declared the committee adjourned.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

AUGUST 28th, 1902—2 P. M.

Pursuant to adjournment the committee met in regular session at 2 o'clock. On roll call the following members responded to their names:

Guerin,	Denman,
Comings,	Hypes,
Cole,	Willis,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Allen,	Maag,
Silberberg,	Huffman and
Worthington,	Sharp.

Mr. Guerin: Mr. Chairman, in order that the proceedings of the meeting may be correctly recorded, after the printer has made his proof it is necessary for some one to go over that proof and it seems to me it should be the duty of the sub-committee. I therefore move you that the chair appoint a committee of three whose duty it shall be to read the proof and correct it as soon as it is obtained from the printer and also to see that the copy of the stenographers is promptly furnished the printer.

The motion was seconded.

Mr. Cole: Isn't that logically a part of the duty of the committee that is looking after the printing?

Mr. Willis: I rise to a point of order. The motion has already been carried and the gentleman is entirely out of order.

Mr. Cole: Mr. Chairman, has that motion been carried?

The Chair: The Chair thinks not.

Mr. Cole: I move to amend by substituting the committee that is looking after the printing of the reports of these meetings.

The amendment was seconded.

The Chair: It is moved and seconded that the original motion be amended by substituting the sub-committee on rules and order of business.

Mr. Guerin: I want to say that the sub-committee is not seeking to shirk any duty that is imposed upon it, but we have just about as much as we can do to arrange this programme and look after the speakers and see that they get here and make other arrangements, and I don't think it right to have this additional duty imposed upon us. I don't believe we will have time to do it. I want to see it well done and I think it will take a great deal more time than the members of this committee will have to give to it if they perform their other duties.

Mr. Stage: So far as I am concerned as a member of the sub-committee I shall be very glad to do that work if it is the wish of the committee that we shall do it. I think, perhaps, we are better able to do it than anybody else.

The Chair then put the amendment and declared it lost.

The Chair: The question is on the original motion.

Mr. Cole: I will support the original motion on one condition, that the Chair follow the rule that the maker of the motion be the Chairman of the committee.

The motion was then put by the Chair and was declared carried, and the Chair announced that he would appoint the committee later.

The Chair: Has the Committee on Programme anything to report for the afternoon, or shall the Chair make the announcement?

Mr. Guerin: The Committee on Programme desire to recommend that no questions be asked of the speakers while they are making their addresses. Keep a memorandum of what you want to ask them and put the questions to each speaker after he has concluded his address. Interruptions disturb the effect of the addresses and to avoid this we make the request of the committee.

The Chair: The committee have heard the request. I think it is well that questions should not be interjected into the addresses of those who speak, but the questions should come afterwards. The committee have prepared for this afternoon three subjects and have assigned one hour to each subject. The first address will be by Mr. Garfield, who will speak to us on the Advantages of the Federal Plan in Municipal government. The second one will be by Judge Pugh, of Columbus, on municipal government in general, and the third by Mr. Hoggsett, of Cleveland, on Legislative Power which can be lawfully delegated to Municipal corporations under the Constitution of the State of Ohio.

Mr. Garfield: Mr. Chairman and Gentlemen of the Committee:

I first wish to express my appreciation of the opportunity given me at this short notice of appearing before your committee to speak on this subject. I wish I might have had a longer time in order to prepare myself more thoroughly on some of the features of the pending bill, but I cannot plead ignorance of it, because I have had it in mind very thoroughly for a number of years past and I am very glad to have this opportunity at this early day in the discussion before this committee of presenting to you what my ideas are on the subject of municipal government. It is not necessary for me to go into detail here or into much of a review before this committee on what has happened in the last few years. I simply want to bring briefly to your attention a few points which will touch directly upon the subject on which I shall speak.

As you know, various forms of municipal government have been tried in our state. The legislature from year to year has been by special act giving to certain cities different forms of government and they have been trying the experiment of seeing which government will give to the people of a locality the largest measure of prosperity in their municipal affairs, and one of these plans which has been adopted by a number of municipalities, which has always been in vogue for the smaller cities and has always been in vogue for the villages is what is known as the Federal plan. Now, that word has been much misused, and the Federal plan has been extended and changed so that in some cities it has lost all semblance to the original Federal plan and resulted in a form of government which is neither Federal nor board; but the true Federal plan as first introduced in this state and as understood by those who are conversant with municipal government is based upon the same theory upon which the National government was formed, namely, the strict separation of the legislative, executive and judicial branches, that is, separation not merely in form but absolutely in the duties that are to be performed by the different departments, keeping them entirely separate, recognizing that each has its own proper functions and should not be interfereed with nor hampered, embarrassed or curtailed by the acts of a co-ordinate department. And therefore I wish to call your attention to what occurred in the formation of our government and of the state governments. The people of America went through then exactly what the people of Ohio are going through today when we organized our original state governments. There was a controversy between the democratic members of New England where the democratic spirit of the township threw everything into the board plan, and the southern members, where the county was the unit and where

I think that to be able to express an opinion in regard to those provisions, a man must put a great deal more time on it to get it out than Mr. Ellis did to put it in; it takes longer to get it out; and if you want to know what he has accomplished you must take more time to find out than it took him to do it. Now, I say from the little examination I have made of that measure I do not believe there is anything in it which the supreme court would hold to be unconstitutional.

Mr. Guerin: As you understand that bill, it is a bill which provides the organization proper of cities and leaves the fulfilling of the organization to the people?

Mr. McMahon: It provides for the organization of cities and it leaves the power of completing and developing the administrative organization in the hands of the board of public service.

Mr. Guerin: And the people, the elective officers?

Mr. McMahon: Well, yes—

Mr. Willis: I have endeavored to formulate some kind of view of the conditions which obtained prior to 1851 and just what would exist if this bill became a law, would this be an accurate statement of the facts in the case: That prior to 1851 we had our municipalities organized under various special acts but that after this bill became a law we would have our municipalities organized under the general law that would, say, lead to different results in different localities? In other words, would the only effect be that prior to 1851 the legislation was by the General Assembly, and here it would be by a local government; is that the only difference?

Mr. McMahon: The difference would be better put in this way, I should say. It is pretty hard to make an off-hand statement in regard to a general subject of that kind. Before the adoption of the constitution of 1851, each municipality was governed by a separate law, and the laws governing each municipality were in turn supplemented by local ordinance. The constitution of 1851 prohibited the governing of municipalities by separate laws. General laws of uniform operation had to be passed or that was what the constitution said that they should pass—general laws—so that all the municipalities would be governed under the general laws.

Now the intention of the framers of the constitution must, to a large measure, be inferred from what they said. The framers of the constitution said that the General Assembly shall provide for the organization of cities and incorporated villages by general laws. But it put a further

limitation on that subject; that general laws shall have a uniform operation throughout the state. Now, as I said in my paper, absolute uniformity is impossible and the limit of reasonable uniformity is soon reached, and, as a matter of fact, there is an absolute limit beyond which uniformity cannot go and some method has to be provided for supplementing those general laws. There was in existence at that time a recognized authority; it had always been recognized as the method of supplementing the law. The constitution permitted and contemplated that the General Assembly should make use of that power, the delegated power of local legislation, and it put no restrictions upon that delegated power of local legislation which required that the municipal ordinances of Cincinnati should be in the exact terms of those of Columbus and Cleveland. It left them free to make such municipal regulations, through the exercise of the delegated power of local legislation, as the needs of the municipality should call for, or as their ideas of public policy should call for, so long as they did not conflict with any general law.

Now there is one gentleman who seemed to have an idea—at least, the way he framed questions he seemed to have such an idea—that this bill is going to permit every municipality in the state to run things generally as it sees fit. The bill will not permit such a thing unless you neglect your duties, in regard to the question of general laws. Take the question of assessments, the General Assembly can make general rules in regard to assessments as to limitations and methods of assessment, and the municipality, through the exercise of the power of local legislation, may constitutionally create an organization which shall work under all the limitations the General Assembly puts upon that power. The General Assembly is not restricted at all, and the bill does not contemplate that the General Assembly shall turn all these powers over absolutely to the municipality. Anything which can be done by a general law of uniform operation may be passed by the General Assembly and the law will affect every city or every village, as the case may be.

Mr. Denman, of Lucas: If I remember rightly, Mr. McMahon, does not the bill provide that the municipal constitutional convention shall limit the power of taxation and assessment?

Mr. McMahon: Yes.

Mr. Denman: Is not that in direct conflict with the section which provides that the General Assembly shall provide—

Mr. McMahon: I take it not, Mr. Denman. I take it that the constitution says that in delegating the power of taxation to municipali-

ties the General Assembly shall restrict that power, but the General Assembly in delegating that power does not say to the municipality, "You *must* exercise this power up to a certain limit," it says you *may* exercise the power not beyond that limit. Now the provision in this bill in regard to that question is that in the municipal constitution, the General Assembly having delegated the power of levying taxes up to 10 per cent.—I don't know what the provision is—up to 10 per cent.—that power is made large enough for the largest city in the state, but it may be too large for the smallest city of the state. Now the idea of the municipal constitution on that question is that the people of the city should say to their council how much of that power which has been delegated to them by the general assembly shall be exercised by council. It is simply putting a limitation within the limitation which the act itself provides. The act says they shall place a limit which shall not exceed so and so.

Mr. Denman: What is the object of that provision, then, if it is not to keep that to a certain limit specifically?

Mr. McMahon: The object is to keep the council to a certain and specific limit; if the people of a city of six thousand want the council to exercise power only up to a certain point, even although the general assembly has conferred that power upon the council, the people can say so.

Mr. Denman: That is, do you mean to say, Mr. McMahon, that we shall have complied with the constitution, if we require the municipal council to make the limitation, or make it ourselves?

Mr. McMahon: No, it is a pretty close question, Mr. Denman; you will remember that Judge Ranney said that the failure to place a limitation or restriction upon the powers specified would not be a ground for judicial correction; you know what that language means.

Mr. Denman: Do you think it is only directory?

Mr. McMahon: I am not going to say that; I should say it was a restriction. Judge Ranney thought it would not lay a basis for judicial action.

Mr. Willis: I am not a lawyer but I wish Mr. McMahon would explain a matter here so that a layman could understand it. I understood you to agree that under the operation of this law municipal governments would be created which would vary considerably and not be by any manner of means the same?

Mr. McMahon: The administrative organization would vary, yes sir, without question, and that is the special purpose of the bill.

Mr. Willis: Then the next question I want to ask, could a law, under which diverse governments were organized properly be said to operate uniformly? I wish you would answer that so that a layman could understand it. I want to know what you are talking about?

Mr. McMahon: Well, I can say this, and it is the simplest way I can put it, Mr. Willis: The constitution says that laws of a general nature shall have a uniform operation throughout the state. The constitution does not say that acts of local legislation shall have a uniform operation throughout the state, because they are local acts and refer only to the particular locality which enacts them. The supreme court of the state of Ohio has said that it is not necessary that the local regulations shall be the same in different cities, and you realize, I think, as a layman, that the municipal ordinances of Cincinnati and Cleveland and Columbus vary in their form and vary in their effect. There is no requirement in the constitution, nor is there any requirement of constitutional law, that demands that the acts of local legislation shall be the same. In the different municipalities they may vary as much as the municipal interests demand or as the sense of public policy in the local legislative body may think requisite.

Now that is true in regard to every element of the power of local legislation, whether it be a municipal ordinance of a criminal nature or whether it to be a municipal ordinance, or regulation of any kind, which creates offices, administrative offices. Those offices may be created by municipal regulation; the municipal regulations creating them and prescribing their duties may vary in different cities according to their municipal necessities.

Mr. Guerin: There is another question I would like to ask you: Is there anything in this bill which limits the amount of taxation by any municipality or gives to any municipality the right to borrow money?

Mr. McMahon: Yes, I should say so. I don't know whether it is in the express language but it gives them the authority to create indebtedness.

Mr. Guerin: Is there any limit to the amount of taxation in the bill?

Mr. McMahon: Yes, it says it shall not exceed a certain amount.

Mr. Guerin: What is the limit, do you know?

A Voice: The same as in the governor's bill.

Mr. Guerin: Is there a limit to that?

Mr. McMahon: Yes, there is a direct limit on the power to create indebtedness.

Mr. Guerin: Do you know what the limit is?

Mr. McMahon: You will have to ask the judge.

Judge Stewart: Ten mills in cities and five mills in villages.

Mr. Denman: I believe it does not provide for their creating or contracting debts?

Mr. McMahon: It grants the power to create indebtedness; yes, sir.

Mr. Denman: That is a different proposition from the limits of taxation?

Mr. McMahon: It limits the power of taxation and limits the power to create indebtedness.

Mr. Denman: Another question: This code uses the word "for" in the constitution in its literal or strict meaning, and it may provide any way?

Mr. McMahon: Provide for the organization simply; that is the constitution as it reads.

Mr. Denman: Then wouldn't you take it just as it reads as to limiting their power of taxation and assessment?

Mr. McMahon: Mr. Denman, when I made that remark awhile ago I simply spoke about what the supreme court said; the supreme court of Ohio has said, speaking through Judge Ranney, that if you should fail to perform that duty it would not lay a ground for judicial correction. I think that is stretching the power of the general assembly a good piece, but that is what Judge Ranney said.

Mr. Guerin: I move that we do now adjourn.

Motion seconded and carried, and chairman Comings declared the committee adjourned.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

AUGUST 28th, 1902—2 P. M.

Pursuant to adjournment the committee met in regular session at 2 o'clock. On roll call the following members responded to their names:

Guerin,	Denman,
Comings,	Hypes,
Cole,	Willis,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Allen,	Maag,
Silberberg,	Huffman and
Worthington,	Sharp.

Mr. Guerin: Mr. Chairman, in order that the proceedings of the meeting may be correctly recorded, after the printer has made his proof it is necessary for some one to go over that proof and it seems to me it should be the duty of the sub-committee. I therefore move you that the chair appoint a committee of three whose duty it shall be to read the proof and correct it as soon as it is obtained from the printer and also to see that the copy of the stenographers is promptly furnished the printer.

The motion was seconded.

Mr. Cole: Isn't that logically a part of the duty of the committee that is looking after the printing?

Mr. Willis: I rise to a point of order. The motion has already been carried and the gentleman is entirely out of order.

Mr. Cole: Mr. Chairman, has that motion been carried?

The Chair: The Chair thinks not.

Mr. Cole: I move to amend by substituting the committee that is looking after the printing of the reports of these meetings.

The amendment was seconded.

The Chair: It is moved and seconded that the original motion be amended by substituting the sub-committee on rules and order of business.

Mr. Guerin: I want to say that the sub-committee is not seeking to shirk any duty that is imposed upon it, but we have just about as much as we can do to arrange this programme and look after the speakers and see that they get here and make other arrangements, and I don't think it right to have this additional duty imposed upon us. I don't believe we will have time to do it. I want to see it well done and I think it will take a great deal more time than the members of this committee will have to give to it if they perform their other duties.

Mr. Stage: So far as I am concerned as a member of the sub-committee I shall be very glad to do that work if it is the wish of the committee that we shall do it. I think, perhaps, we are better able to do it than anybody else.

The Chair then put the amendment and declared it lost.

The Chair: The question is on the original motion.

Mr. Cole: I will support the original motion on one condition, that the Chair follow the rule that the maker of the motion be the Chairman of the committee.

The motion was then put by the Chair and was declared carried, and the Chair announced that he would appoint the committee later.

The Chair: Has the Committee on Programme anything to report for the afternoon, or shall the Chair make the announcement?

Mr. Guerin: The Committee on Programme desire to recommend that no questions be asked of the speakers while they are making their addresses. Keep a memorandum of what you want to ask them and put the questions to each speaker after he has concluded his address. Interruptions disturb the effect of the addresses and to avoid this we make the request of the committee.

The Chair: The committee have heard the request. I think it is well that questions should not be interjected into the addresses of those who speak, but the questions should come afterwards. The committee have prepared for this afternoon three subjects and have assigned one hour to each subject. The first address will be by Mr. Garfield, who will speak to us on the Advantages of the Federal Plan in Municipal government. The second one will be by Judge Pugh, of Columbus, on municipal government in general, and the third by Mr. Hoggsett, of Cleveland, on Legislative Power which can be lawfully delegated to Municipal corporations under the Constitution of the State of Ohio.

Mr. Garfield: Mr. Chairman and Gentlemen of the Committee:

I first wish to express my appreciation of the opportunity given me at this short notice of appearing before your committee to speak on this subject. I wish I might have had a longer time in order to prepare myself more thoroughly on some of the features of the pending bill, but I cannot plead ignorance of it, because I have had it in mind very thoroughly for a number of years past and I am very glad to have this opportunity at this early day in the discussion before this committee of presenting to you what my ideas are on the subject of municipal government. It is not necessary for me to go into detail here or into much of a review before this committee on what has happened in the last few years. I simply want to bring briefly to your attention a few points which will touch directly upon the subject on which I shall speak.

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Those two forces, the people and our state government, were in favor of this proposition to a large extent. The proper form was the proper one, so that all of the state would be included. We had in New York at that time, this proposition was made by the side and Clinton on the other side. We must have a strong central government that would obtain and would be able to do what we want to sub-divide the state into here and there, but we must have New York organized and have a strong central authority.

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great state ought to have in shaping the affairs of our state, and this legislature in its wisdom and very properly has submitted to the people of this State a Constitutional amendment to increase the power of the executive and give him the power that he ought to have to execute the laws and to take part in the administration of the state government in this State of Ohio.

We are coming to the same proposition in the municipal government of this state, and the municipal government is no different from the state government, except that it is a smaller body. Indeed, the city governments today are assuming a proportion, as we all know, that is far greater in the amount of business done and the people affected and the property over which they have control than our state government. In one or two of the great cities the expenditures year by year are greater than the expenditures of the state of Ohio. The money taken from the pockets of the people to pay the expenses of Cleveland is greater in amount than that paid to run the State of Ohio. And so it is that they require in those cities the same strong, forcible government that we have illustrated, and I say the people now have come to the point of determining what form of government is best adapted to our municipalities. They are now to start out afresh and now it is not a question of compromise, it is not for passing a law because some one wants it that we are here now. You are passing a law because you have got to have it in order to carry on the operations of the municipalities of this state, and therefore you want to make that law the best possible and not compromise simply because some one wants one form of government or another form of government. The members of this legislature must determine what they think is the best form, not what one set of men might want or another set of men might want.

I have heard it said very often in this discussion in the last few days, "Oh, let us pass the bill that is presented, pass anything that we can and get some form of constitutional government, give the people of the different localities a constitutional government, no matter whether it is good or bad, and if they elect good officers, then they will have an honest and efficient government." Is that the way we are running things in this country today? A man may be the best farmer in his community, but he does not want to take a stick and hitch an ox to it and plow with that. He wants the best plow that he can get in the market. He is not going to thresh out his wheat with a flail because he is a good farmer and can do it; he is going to have a threshing machine. Now, that is

what we want with municipal government. We don't want to have any form of government that is presented and get it through just because it is constitutional. We want the members of this legislature assembled to give us the best form of government that can be given and give the people of these municipalities an opportunity of working out with the best possible tools the municipal questions that are coming before them.

Now, as I say, the point of discussion is the executive. Shall you have a divided executive or shall you have a single-headed executive with strong, ample powers for administering the law? What does a subdivided government mean? It means that there is no responsibility anywhere. You can not put your finger on the man who is at fault when mal-administration occurs. If you have three boards with four or five members on each board and something goes wrong, who is at fault? The people's money is squandered, their property is lost, their lives are imperiled, but nobody is at fault. It is like a picture of the old Tweed rule. You all remember Nast's picture of every fellow pointing to his next neighbor "He is the man who did it," and the public could not find anyone who was responsible for the mal-administration when that system was abused, when the power was granted to many instead of being centralized in one.

Now, that is the basic reason for having a single-headed executive, that we can hold that executive responsible for the executive administration of the government. Supposing the governor of the State of Ohio did not have authority to appoint and dismiss the boards of the great State institutions. Supposing some outside authority appointed these boards and then said to the governor: "You are responsible for the administration of these institutions." The governor says: "I did not appoint these men, neither has the legislature appointed them or the people elected them, and yet under the Constitution I am responsible. I have nothing to do with them, because these men were appointed by some outside authority or elected by some other body."

That is the same proposition that you come against when you have boards of administration and boards of public service appointed either by the governor or elected by the people or appointed by the mayor with no power of removing them in case of mal-administration. By that very act of separating the executive by that very act of dividing that responsibility you make the mayor of a city a mere executive clerk. True, he is given in the bill as proposed veto power, as he should be, but when it comes to the administration

of those executive departments his hands are tied. True he appoints his board of public safety, but once they are appointed they are like the iron man that was made in the story, the maker of the machine was crushed in the machine himself because he could not stop the machinery he had put in motion. And so it would be with the mayor who appoints a board which could not be removed except after preferring charges and going before council and having two-thirds of the council agree with him. Whoever heard of men being dismissed from office by any such methods as that?

Then the next fundamental principle of any form of government nowadays is the merit system. Now, you have heard civil service sneered at and it has been called snivel service and all sorts of things, and any man who believed in what was called civil service was considered a crank, but the days of that sort of reasoning have long passed. The merit system is as much a part of the American form of government as the legislative or the executive branch. The merit system as administered in National affairs is recognized as the salvation of honest administration, and I want to tell you my personal experience with one of the greatest spoilsmen in Congress, a representative from one of the border states. He came to my office and said: "Mr. Garfield, do you read my speeches on the floor of the House in opposition to the merit system? Don't believe a word of them. They are given and delivered there for publication. When my constituents want office I have to show them that I have been trying to get them office, but I want to say to you that I would not under any consideration vote against the retention of the merit system." He said "Congressmen could not live and the government could not be honestly administered if we went back to the partisan system of filling the offices in the executive departments of this country." That is the way you find it with most men in Congress. When they get down to the real point of determining whether the merit system is wise, they will tell you yes, it is wise, it is the proper way to administer the non-political branches of any government.

The same thing is true in municipal affairs. It is recognized in New York and is made a part of their Constitution. In the city of New York, which is considered the hot bed of municipal corruption, the people there by an overwhelming vote made the merit system a fundamental part of their municipal charter, and when men tell me that the people are not educated to the merit system, I know that those men are either ignorant of the conditions or they want to perpetuate the spoils system

for the purpose of keeping their own political party in control of the municipal offices rather than putting in men who are efficient and honest simply for the purpose of carrying on municipal affairs in an honest and efficient way. The merit system is no longer an experiment; it is recognized as a necessary part of any properly organized government.

Now, what I mean by the merit system is not what has been laughed at, it is not the asking of questions that are entirely irrelevant to the character of the duties that must be performed by the person, but the merit system is simply this: It provides that the executive shall appoint from eligible lists of men and women who have taken open and competitive examinations on subjects which have to do with the office which they seek to fill, and the executive selects those who are at the top of the list for appointment. Now, what is the character of the examination that should be imposed? Take, for instance, in Chicago, what is the examination they have there? They want a plumber in the water works department. The examination that they take is of this character: The plumbers present themselves to the board and a man is called forward. The examiner says to him: "There is a break in a six-inch pipe out there on a certain street and it connects with a twelve-inch pipe at a certain number of feet away. Here is a kit of tools. What tools would you take to go out and repair that leak?" Now, is there anything nonsensical about that examination? Is there anything ridiculous in getting hold of men in the city employ who will know how to do the things that the law requires them to do? That kind of examination is the kind that is being adopted everywhere that proper merit systems are in vogue. What was the result in Chicago? In that city after the first year's administration of the merit system the city payrolls were reduced by one million of dollars, a saving of that much to the people of Chicago by the enforcement of a proper merit system. They do not have stuffed payrolls of men who are doing nothing but drawing their salary and working for the political boss of their ward. They have an efficient, honest set of public officials. I grant you that we are not going to revolutionize any city government in a moment, but if you start in right and give the people the opportunity of having the right kind of men appointed to these offices, then you give the people of that community an opportunity of having a much better form of government than they could otherwise have.

What is the excuse for not having the merit system? Ask any of these gentlemen who now say that we don't want to put the merit

system in the code why don't they want to put it in? One will tell you: "We don't want it in because we don't want to have to turn out any of the officers who are in there now. They are good fellows and they have been appointed and we don't want to turn them out." And they will say, perhaps, "The Republicans are in office in a Democratic city," or they will say vice versa, "and we don't want them turned out and the other fellows put in so that we can not get in again." In other words, they are all seeking the party, factional side of it rather than the business, civic side of it. They are trying to fill the offices with their political friends rather than fill them with men and women who are efficient and honest and will look to honesty's side rather than to the interests of the party or the faction. That is the real reason for the opposition of the ordinary politician, and I wish to use the word in a proper sense, to the merit system. But, gentlemen, should that obtain when you are considering a question so broad in its effects as this?

You are legislating here not for to-morrow, not for one year, but you are legislating for many years to come. The Supreme Court has opened the way for the legislature to adopt a system of government that is constitutional and is better than anything we have had before. You don't want to make the mistake of putting upon the people of this state a government that will be worse than existing conditions, although constitutional, and if it be constitutional, as I have no doubt it will be, if it is bad so much the more difficult will it be to get rid of it in years to come. Don't pass a measure simply because you can get the votes for it, but get the measure in the best condition possible before you get the votes for it. Don't let factional differences and partisanship affect the determination of this question at this time. I beg of my Republican brethren not to be frightened by Tom Johnson of Cleveland. That is not the question that is at issue here. Mr. Johnson is but an incident in political life. And I beg of my Democratic friends not to be afraid of Mr. Cox in Cincinnati. Mr. Cox is but an incident in our political life. What those men are to-day means nothing in comparison to what the work you are to do here means to the people of this state. Don't throw aside the federal plan because you dislike Tom Johnson and his ideas. Don't vote for the board plan because you believe that George Cox can control the Republican voters of Cincinnati. That is the weak, the timid, the cowardly way of taking up such a question as is before you now.

With these general ideas which I believe to be fundamental I want to call your attention to some of the particular and special points that appear upon the bill that is now before this body known as the administration bill, if I may so term it. I am referring now to the bill that was introduced by Mr. Comings, and I wish to call your attention to a few of the sections that have to do with the questions which I have endeavored to present to you to-day, and in doing that I would compare for a moment the bill that was introduced by Mr. Comings at the latter part of the regular session, namely, house bill No. 1065. These two bills represent the two opposite forms of municipal government, one the board plan, the other the federal plan. I am not aware that this bill has been introduced into either body, or one like it, this 1065, but I can discuss these bills side by side because they do represent these two different ideas.

House bill 1065 was the boiling down of the longer Pugh-Kibler bill, but entirely and radically different from that bill in that it presented simply a skeleton form of government, leaving everything out that was new, eliminating all questions that were open to dispute and leaving the bare skeleton of the federal form of government and applying those sections directly to the existing sections of the statutes. The bill as introduced now is the broad plan of government and is a separate bill, altogether separate and distinct from the general sections of the statute and must be made to apply to those sections of the statute by interpretation of the Supreme Court or by further annotation or codification on the part of future legislators. It stands by itself and simply refers to certain sections of the statute, but is not a part of the statutes and can not be made a part of the statutes except by re-codification in years to come. Now, primarily I think that that method is not logical. I think that the whole method of the preparation of this bill will present difficulties of construction and interpretation that would be entirely avoided by the Comings bill known as House bill No. 1065. We have had for the last 50 years interpretations of the various sections of the statute by the Supreme Court. These interpretations all apply to well-known sectional numberings. These sections have become as familiar to lawyers as the A, B, C, of law. The decisions affect property rights. The rights of the cities to conduct their own affairs have all grown up under those special sections. Now, by the proposed bill those are all wiped out of existence and there is an entirely new code outside of the sectional numbering of the statutes. To my mind it is unnecessary, it

is illogical and it will produce a great deal of difficulty in interpretation and confusion in indexing and cross-indexing and understanding of municipal conditions if this bill should become a law. This bill can very well be put into the existing sections of the statut, as the Comings bill well be put into the existing sections of the statute, as the Comings bill ing a codification.

In the first place, section 7 of this code, the general powers of municipalities, is supposed to be a re-codification of section 1692 of the Revised Statutes. What is the need of wiping out section 1692, which gives all the general powers that are contained in section 7 here, and substituting a new section with different wording and different divjsions, all of which will again have to be construed by the Supreme Court? The Supreme Court has construed and re-construed almost every word of section 1692 which confers the powers upon municipalities. Why wipe that out of existence and start in anew? It brings confusion rather than helpfulness in the construction of municipal statutes.

The same criticism is applicable to Section 9, the special powers. All of that is provided for in section 2232 of the Revised Statutes. The appropriation of property is provided for there and as I have compared these through to-day I can see no reason for repealing a large number of sections having to do with the appropriation of property and re-enacting these sections with different numberings and with wording somewhat changed. I notice in section 20, and I desire to call the committee's attention to this, because I don't know the reason for it, the existing section 2251 of the Revised Statutes reads: "Any person interested in the appropriation of private land for a street, alley, or public highway, may, before or after the passage" etc. That has all been stricken out in section 7, which reads that any person may give bond and the council will open the street. Now, what is the reason for such change as that? That is not part of the system of government, that is not a skeleton on which to form government. I confess I do not know what the reason for such a change as that is. It might allow anybody or any corporation that wanted to go through a street, through property over which it had no control and in which it had no interest by putting up a bond to get the street opened through although everybody in the neighborhood might object to it. It seems to me in matters of that kind where it is a question of power and not a question of the form of government that those matters should be left in the statutes as they are without making these changes when we are simply trying to form a government and not trying

to re-form all the laws that have to do with the powers of government. That was the theory upon which House Bill No. 1065 was drawn. Simply get your skeleton and leave alone the question of powers to be hereafter acted upon by the legislature.

Then section 29, 30, and 31 have to do with the granting of franchises. What is the need of taking that question up at this time? The laws are ample for the granting of all franchises, for the granting of extensions, for the re-granting or renewal of franchises. Why bring that in at this time? The committee very wisely determined with the Pugh-Kibler bill that it was not the right thing to bring those questions into a codification of the structural form of government. It seems to me that this all better be left out as extraneous and confine ourselves to the work of building the government, giving it a proper form, the best form obtainable, and then later if there is any need of changing the existing statutes relative to these powers of government, then consider those in a separate measure. And I see by the papers that there is liable to be more discussion over this question of franchises, more effort brought to change those conditions that are in there than there will be to frame the municipal government; and I trust, and I know, in fact, that this body will not be led astray and lose sight of the fundamental thing here in order to get a change in the franchise powers granted to corporations. That is not what you are here for. You are here to frame a municipal government, not to deal with the general proposition of the street railway question.

Then I wish to call your attention to division 4, on page 18, the matter of taxation. The old original section 2683 of the Revised Statutes is repealed and these sections 37 down to and including section 47, I believe take the place of much that is in the statutes on the subject of finance and taxation. Now, again I ask the question and I wish you would consider it. What is the need of changing that well-known section 2682 and the subsequent sections thereto? All the powers granted by former legislatures of a general character to municipal corporations relative to finance and taxation have been thrashed over a hundred times in our Supreme Court. We know exactly what they mean, we know what every word means and its relative weight and bearing as to the other words. Why wipe all that out of existence and start in afresh? By doing it you simply mean there is more litigation before the Supreme Court on the question of finance and taxation. You have to start in again. Many of the phrases are in again but they are in different order,

new punctuation, new words are added, more words taken out, and that means litigation on nearly all of these points.

On page 22, at the bottom of the page, there is this wording: "The limitations and restrictions imposed upon all municipal corporations in the state by sections 2699 and 2702, Revised Statutes, shall be and remain in full force and effect." If you refer to these sections of the Revised Statutes and that wording and this bill will not interfere, put the Burns law back in the statutes where it should be. Now, all these points must be specially considered by the legislature when they come to enact a new bill which wipes out all these sections. You don't know where you will stand when you get through with them. Isn't it wiser to take the sections as they are, repeal those that you know are not needed and re-enact with the same sectional numbering those that are still existing, simply adding to them that which is necessary to meet the conditions that have obtained in the various cities under the recent decisions of the Supreme Court? Isn't that the logical way to act on this thing?

Now, as to the form of city government, the legislative form. That is a question of individual choice whether you have five men, or ten, twenty or thirty men. That is a matter that is not open to discussion, everyone can choose as they please about that, but so far as that is concerned this bill is wise. It separates entirely the legislative from the executive branch, but would it not be better to insert that legislative provision and those clauses in the statutes where they belong under the appropriate heads and the appropriate sectional numbering, rather than in a separate bill and then repeal those sections, leaving a blank space in the statutes, and with the decisions of the Supreme Court applying to nothing, because the new sections are not in the same wording, and introduce new and extraneous matters in them?

That brings me, then, to the executive feature of this bill, and that, to my mind, is the most objectionable of all the features in the bill, and that is the department of public service. This bill provides for the election of a board of public service, all its members to be elected at the same time with the mayor, and this board of public service is to be the chief administrative authority of the city and shall manage and supervise all public works. It takes the place of the mayor in everything except the veto or the signing of ordinances, practically. The whole conduct of the city is left in the hands of three men. Now, how will that conflict with the powers of the council? Under section 28 of this bill, the council shall have the care, supervision and control of public

highways, streets, avenues, alleys, sidewalks, public grounds, bridges and viaducts within the corporation. There it grants to the council the supervision of all these different things. Under section 93 the board of public service shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wharves, docks, landings, market-houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship-channels, streams and water courses, quoting the same thing that we have before. Here they are trying to mix up and give to the administrative power something to do with the legislative power, they are turning over to the board of administration, three men, the absolute control and supervision of all the great public works.

I remember when we were discussing the original code bill there was a great cry of horror from some of the same gentlemen who are advocating this measure over the idea that a small council of seven should have charge of the affairs of a city, yet these same gentlemen have put into the hands of three men the absolute power and control over all these various public works. And what has the council got to do with it? Very little indeed. True they have to endorse certain contracts over \$500, they have got to make certain appropriations, but the board of public service employs everybody in the public works, the board of health is wiped out, as you made it at the general session, and put under their control. They appoint all the officials and while nominally the mayor is at the head of the executive department of the city, the board of public service does everything that the mayor ought to do and they do it in a way different to what the mayor would do. The mayor would be bound by the actions of the council. The board of public service seems to operate under this bill as something entirely separate and independent, even doing some of the legislative acts that the council itself should do. Now, what is to be gained by that kind of a division of authority? If you elect the mayor and give him power through his board to take care of these things, all he has to do is to carry out the orders of the council, and that is what he should do, and he is responsible for all of these things. He is responsible for the conduct of the park system, he is responsible for the conduct of the water-works and the reformatory institutions under the orders of the council. By this provision of the bill here all the authority that was in the council over reformatory institutions, over the workhouse, over the board of health, is taken out of the hands of the council and put into the hands of the three members of the board of public service. Now, why is this?

What is to be gained by it? It seems to me it is an utterly pernicious idea to sub-divide the executive authority and make it possible for the mayor to say "I am not responsible for that, the board of public service does that." You go to the board of public service. There are three members. "I did not want to do it, but Tom Jones and Bill Smith voted for it and I let it go through." It takes two only to do it, and instead of having one man responsible, as the mayor would be, you have a majority of three men and each one hiding behind the coat-tails of the other if anything goes wrong. They are all elected at the same time, you have not the benefit of having men of different parties in it, they are all of one political complexion ordinarily. What is to be gained by taking away from the executive the power that he should rightly have? It seems to me that those sections alone should warrant this legislature in turning back and adopting the federal plan with the proper amendments that should be made to it of giving the executive that ample authority and strict responsibility.

Now as to the organization of villages. This code proposes to cut the line at 5,000, which is quite right, but think of what is going to happen in the municipalities of 5,000 and more which have got to have a board of public service and this board of public safety, which I had forgotten. The board of public safety has four members, supposed to be bi-partisan, I think, appointed by the mayor. Immediately they are appointed they are out of the power and control of the mayor. He is said to be the head of that board, but they control him, not he them. Why do we need four men to take care of what one man can well do, and much better do? Those four men, the same as the board of public service, divide their responsibility. Supposing you have a fire and the fire chief is not there for some reason to direct the firemen. The director of fire is the man responsible. If you have got four men to determine what is going to be done you are not going to have the active kind of work at a fire that you need. And the same in the police department. Supposing there is a riot. You have four members of the board of public safety. They have to get together and determine what to do. Meanwhile lives and property are destroyed and the responsibility is divided. If the mayor is in control, he alone is responsible.

Now, to go to the villages. All corporations of 5,000 and more will have to under this bill have this heavy machinery of government. Take a village to-day of 5,000 or 6,000, or a corporation. They are getting along perfectly well under the federal system. They have their

mayor, who is the executive, they have their council and there is no trouble whatever, and these smaller municipalities are not crying for this board system of government. They have men who are responsible and whom the people elect because they know they will carry out what their council orders them to do. But the moment here went into effect, these little villages or little cities, because they are nothing but villages at 5,000, would have to go to work and elect a board of public service and have four members of a board of public safety, and they would wipe out their boards of health and their executive would be destroyed, his power would be gone.

Now, do you think that is going to be acceptable to the smaller municipalities of this state? I for one have not been able to learn that those smaller municipalities favor for a moment the board system.

Then go below 5,000, and what have we there? Are there any village governments coming to this body and asking that their form of government be changed? I have been a member of a village council for thirteen or fourteen years. We don't care for any change. We don't want to have a board of trustees to manage our sidewalks, to manage our lighting, to sprinkle our streets. We members of the council were elected for that. We have a community of six or seven hundred people, and yet this bill says to us, You shall elect a board of trustees, which shall have all the powers of the board of public service. You are piling up offices and dividing responsibility and making it possible for maladministration rather than efficient administration. There is no call for such a change for piling up all these offices of village government. We don't need a solicitor, we have ample power to elect one now or to have one appointed if the occasion require. How many villages in this state need a solicitor, and yet it requires here there shall be a solicitor. We don't need that sort of thing. What we want is the simplest skeleton form of government obtainable, with power to grow upon that and increase it as the needs of the community may require.

Now see how simple the federal form of government was. The executive appointed his four heads of departments and they were responsible to him for the conduct of those departments. He could remove them at will. If they were improper officers, if they were not carrying out the law, he simply said, "We will change horses here and get someone that will pull with me and carry out the orders of the council." The bill provided that in case a city was large enough and required it the council could sub-divide the departments and give the

proper number of officers to carry out the orders of council. In other words, the federal plan is the kernel from which you may grow and develop into any sized government that you want. The board plan imposes upon the smallest municipality a system that is unwieldly, unnecessary and will result in maladministration by reason of the division of authority.

Furthermore, the Comings bill had in it the merit system. Now, what is the practical effect of the merit system? Why has it been possible for Republican and Democratic mayors both in Cleveland to build up strong personal political machines? It was possible because they had it in their power to cut off the heads of every employe in the city government and put in their political favorites. That is the reason they were strong in their political machines. If we had the merit system that would prevent that kind of thing. You would destroy immediately the possibility of building up a partisan machine in municipal politics. A merit system that is wide open for removal but shut tight for appointment to office, a merit system that gives lists of eligibles of people who are competent and honest for the performance of the duties of the offices which they seek, a merit system that permits the head of the department to dismiss immediately by simply giving his reasons, which must not be political or religious, and dismissing that person from service. Would you ever have an efficient man dismissed if the head of that department was unable to fill the position with a political favorite? Never. If he had to fill that position from an eligible list he would keep the competent men in the employment of the city and dismiss only the incompetents; and they are the ones we ought to get rid of. Now, that is the idea of the merit system and that is the merit system that was suggested and provided in the Comings bill.

Now, it is objected to that by some that the Governor was given the power of appointment of the city commission, and they said, "You object to the Governor appointing police boards, why don't you object to his appointing a board for the formation of the merit system?" The difference is very wide between these two kinds of boards. One is a board which has to do with the political end of municipal politics, namely, to prevent partisans from being appointed, and has nothing to do with the administration of government itself, has nothing to do with the legislation of the municipal government, but has solely to do with the formation of a system for examination of those who care to come before

it. It should be non-partisan so that everybody could present themselves and be sure of a fair examination. It should not be appointed by the mayor, because the mayor himself is the one who must make the appointments from the eligible list. It should be uniform throughout the state in order to conform with the constitution, and therefore, as has been done in Massachusetts, and as it has been in operation for years there most successfully, it was provided that the Governor should simply appoint this commission, they should form their regulations and have their local examiners, who would be state officials, and then appointments made from those eligible lists. If that sort of merit system obtained in this state, we need have no fear of either political party build-up a machine contrary to good government and contrary to the welfare of the people of the municipalities. No, gentlemen, the reason that the politicians don't want the merit system is that it cuts off just so much more pap to be given out from year to year. It cuts off just so much more and they say, "We need it in our business for the purpose of getting the votes at the various elections that come along." Now, I want to ask you whether as representing these great communities you want to foster that kind of thing in municipal affairs, or do you want to put it down? You have got a chance to put it down now once and forever.

It seems to me that right on this point there should be no division of sentiment among those who wish to have good administration in our city government. We ought to start off now as they have in New York under their constitution, and despite the fact that we read much of corruption in New York politics to-day it is heaven in comparison to what it was before they had their merit system there; and the very men who were opposed to it years ago in New York are glad to have it, because it takes away an embarrassing thing, namely, the distribution of spoils after municipal elections.

If the legislature deems it wise to pass this code, you should pass the merit system with it, or, if you don't think the merit system ought to be imposed without a vote of the people, put it in the hands of the council to determine whether or not that question should be submitted to a vote of the people, as they did in Chicago, and if the people of any municipality say that they want the merit system, let them vote on it. Don't be afraid to give it to the people. A few men are very liable to go very far wrong if they think by preventing this they are going to work for this or that party any lasting or beneficial good.

Mr. Chairman and Gentlemen of the Committee: I fear I may have occupied more time than is necessary, and I simply wish to thank you for the careful attention you have given me, and if there are any questions any gentleman desires to ask, I shall be glad to answer them.

Mr. Bracken: I would like to ask if the Senator thinks the Comings bill No. 1065 would make ample provision for the government of cities. Has he been carefully through the whole thing?

Senator Garfield: I was carefully through it. I was with it at its birth and know all about it. It has a number of errors in it. There are four pages where the printer has omitted the ends of sections, but the bill, with a few corrections of that character, I think, is a much better bill than the one that is before this body to-day.

Mr. Williams: I believe your idea would be to have no board of public service, but have the mayor do the work of that board?

Senator Garfield: By the appointment of a director of public service.

Mr. Williams: Your idea was to have no board of public service whatever?

Senator Garfield: No board of public service whatever.

Mr. Williams: And who would perform the duties of that board?

Senator Garfield: The mayor, with directors. The mayor could appoint the police.

Mr. Williams: Do you think in a large city, where the work is really more than it is in the entire state, that the mayor could do his duty and also carry out the superintending of great improvements?

Senator Garfield: We never have had any difficulty in that regard in Cleveland. That has not been one of the evils of the federal plan developed there.

Mr. Painter: I would like to make a statement in regard to a matter which the Senator talked about a minute ago, where section 28 provides in all municipalities council shall have the care, supervision and control of public highways, etc. That is in evident conflict with section 92 on page 42. We had Mr. Ellis, a gentleman who took part in the drawing of this bill, address us yesterday and he was saying that these sections did not conflict, and he gave this explanation: That that did not mean that the board of public service would carry out, but was the same as if you desired to build a house and hired an architect. The architect would have the supervision of the building and you occupying the position of the council would control. That was his explanation. That disposed of the conflict of the two sections. I want to ask the

Senator a question. In your argument you talked about the mayor not having any power over the boards that he appointed under the bill under consideration at the present time, and that the federal plan would be much better, and you also touched upon that question in your argument as to a mayor building up a machine. Now, I want to ask you, Senator, if under the federal plan the very greatest opportunity is not presented for a mayor to build up a political machine from the fact that he has this appointing power and also the removing power at his command?

Senator Garfield: I grant very fully that the federal plan without the merit system offers to the mayor an opportunity to build up the strongest kind of a political machine.

Mr. Painter: You think the merit system would bar his making use of the power placed in his hands?

Senator Garfield: I do, because he could not appoint his political favorites. It would be equally possible for a board of public service without the merit system to build up a political machine. They would have the absolute appointment of all officers with the exception of the few officers covered in the police and fire departments.

Mr. Painter: You will admit, then, that the mayor would not have the same power over them as though he had the power of removal?

Senator Garfield: No, certainly not. That is true.

Mr. Denman: You stated, Senator, that one department, the legislative or the executive department, should not interfere with the judicial, or any one with either. This question came to me to ask you: What is your idea as to the extent that the mayor's veto power should go. That is, do you think it advisable, if he is given the veto power, that it should require a two-thirds vote to override his veto, or would it be wiser to provide that his veto could be overridden by simply a majority vote, thus making his veto the means of bringing to the attention of council again a reconsideration of the question on which they have passed?

Senator Garfield: In answer to that, I have always believed in the veto power simply for the purpose of restraining hasty legislation, and the veto power, unless a two-thirds vote is required to override the veto, is practically of no use. I believe in the veto power simply as a means of preventing hasty or ill-considered legislation. It is not an interference with the legislative power except for the simple, original purpose of passage. It is interference by way of stopping rather than by way of acting and the history of the veto in our own country is such that I have always

grown up with the idea that the veto was a wise power in the hands of any executive.

Mr. Denman: I want to ask you one more question. In connection with the question that Mr. Painter asked, would it not be the fact, Senator, that under the merit system even a mayor, having the absolute power of removal, although he must appoint from persons who come to him with certain grades, could build a machine for the reason that the second man who comes in knowing what the mayor wants will acquiesce in his ideas and not stand independently as the man who did stand independently for what he thought was right and because of which the mayor removed him?

Senator Garfield: I could answer that only from experience in those cities where this kind of merit system has been in vogue and in the United States service. It has been proved in all of those cases that the executive finds that he cannot control those appointees who come in under a system of that kind, that the very moment they are appointed they realize that they are independent except in so far as they are inefficient or dishonest. For instance: You hear now the cry that there are too many Democrats in office under the merit system. When Mr. Cleveland was president you heard the cry there were too many Republicans in office. When you get at it so far as you are able to there is very little difference politically in the numbers in the federal service, and practically the influence of the politicians over the executive branches that are now fully covered by the civil service has been reduced to a minimum and practically the executive heads do not turn out efficient men. To cite an example of that: In the treasury department, which has been the department over which the spoilsmen have always tried to gain control, we have Milton Ailes, one of our Ohio boys, who started in as a messenger boy and is now assistant treasurer. We have many examples in all the departments of men who have been through administration after administration and their political affiliations have never in any way affected their promotion; and the secretaries of the treasury won't remove such men because they need efficient men in that department, and the result has been that where the power of removal rests with the heads of departments, although it is absolute and under the ruling of President Roosevelt lately they don't have to have a trial of any kind, the heads of departments will not remove an efficient man. That has been the practical operation of the merit system.

Mr. Denman: Of course we can not argue this matter here, but I will ask this question: Whether the same conditions would prevail in a municipality that prevail there, since the fact is the people who are employed under the federal system at Washington are there and can not be used as a machine, there is no inducement, whereas in the municipalities they are on the ground where they can vote and they are sure to be found out?

Senator Garfield: If the gentleman will turn back in history a few years he will remember before the merit system was in vogue before election time came around all the officials in Washington pulled up stakes and went back to their own cities to work, and the result was that it did give a very strong pull to the party in power to control political machines of the subordinates in the executive departments. That has been done away with.

Mr. Williams: I believe you stated, Mr. Garfield, that the board of public service has some legislative powers under this code?

Senator Garfield: If the statement Mr. Painter made is correct, and that is the first time I have seen it to-day, that would not be true. It was on that point of supervision over all the different highways.

Mr. Metzger: In the city of Cleveland you have the federal plan with a number of departments. Probably you would not need so many departments in the smaller cities of the state. Would the power to create the various departments suited to the locality rest in the council?

Senator Garfield: The plan in the Comings bill provides for these departments. It provides further the council may subdivide these departments under different heads. My personal opinion on that, and it is a much mooted question, is the legislature should provide the office and leave with the council the power to fill that office if it sees fit. As, for instance, with the police judge. Under the old statutes which has been sustained by the mayor of the village might not act as police judge and the council might provide for the appointment of a police judge. The office of the judge itself must be created by the legislature. In the same way the various departments would be authorized by the legislature, but it would leave the council to determine whether or not that authorization would be acted upon and those departments subdivided for larger numbers of officers.

Mr. Stage: I would ask you whether you consider the establishment of departments or offices in a municipality an administrative or legislative function?

Senator Garfield: I should say in answer to that, and it is likewise a mooted question, that it depends upon the character of the work to be performed. For instance: If a department is simply a bureau of a general department and authorizes the employment of more men, more clerks, that is purely an administrative act and the council might by a general appropriation authorize the doing of a certain thing and turn over to the department a lump sum of money and the mayor should then create the necessary number of officers to do the work, utilizing the appropriation given him by the legislative body. If, on the other hand, it is the creation of a permanent department to become a permanent department of the city, my impression is that must be provided for first by the legislature giving council the right to organize that department when it may see fit.

Mr. Stage: One thing further. You urge against the administration code, so-called, the fact between a city of 400,000 and a city of 10,000 inhabitants this board of public service and board of public safety and the system of boards in general would be cumbersome. Would not the same objection obtain in some measure as between cities of those sizes against the establishment of a rigid system of departments as exemplified in the Comings bill?

Senator Garfield: The difference is this. In the Comings bill it provides for these persons called departments and there must be persons performing those duties, even in the smallest city. It may be only one of them. It has got to have an auditor and that should be the director of accounts. There is to be a director of public safety, who might be the marshal or chief of police. Therefore it is not a cumbersome system, because it does not provide more officers than you have got to have, even in the smallest city.

Mr. Stage: Aside from the constitutional question involved and now merely as a matter of policy, would it not be better to establish by general laws for the administration of cities a mayor, a council and the proper police court and let the council decide what departments should put in operation the powers as given by the legislature?

Senator Garfield: As an academic question I should say, if my supposition regarding the powers of the council is correct, that the legislature would have to provide in general terms for the departments, but leave to the council the right to use those departments if they saw fit.

Mr. Stage: Outside of the Constitutional question or whether or not it is necessary under our Constitution that the legislature should pro-

vide those departments, as a matter of policy if it were possible do you consider such a system as that better than those that have been outlined, so that there can be a diversity of municipal government according to the needs of a city of 10,000 inhabitants or a city of 400,000 inhabitants.

Senator Garfield: My tendency has been to say no, it would not be well as a matter of policy to commence with.

The Chairman: We will have to close our discussion. Our hour is a little more than past.

Senator Garfield: One more remark relative to the repealing sections. One objection to the Pugh-Kibler bill was the number of repealing sections, and I simply beg to call attention to the fact there are I don't know how many pages of repealing sections in this bill; and it was stated at that time that the legislature could not possibly act on any bill that repealed so many sections. But now you have got up to a point where you have got to act. It is not a question whether you want to act or not. You will find in the Comings bill No. 1065 the number of repealing sections is very much less than those in the administration bill, for the reason that the existing sections are not changed except where you have to change them; and here everything is changed because they are wiped off the slate and written all over again.

Mr. Bracken: Just one question. It comes from the sub-committee and there is no better man to answer it than the senator, and it is in reference to the appointment of non-partisan or bi-partisan boards of civil service. For instance, in a city would you get better results by having the mayor appoint that board or the political parties their respective parts of that board?

Senator Garfield: As I stated, I think in that character of board where it is purely one for examination the appointment should not be made by the power who would have the selection thereafter from the list of eligibles, but the appointment should be made by some outside authority, and the only authority we have in this state to make such appointment would be the governor, and he should appoint bi-partisan boards. Ordinarily a bi-partisan board does not mean anything and it is very difficult to get a good bi-partisan board, but it is the only way we have of dealing with that kind of question.

Mr. Bracken: Let me call your attention to the county boards of election. Two of each party are appointed by the secretary of state on the recommendation of the party central committees. Could not that same test be applied and get the same result?

Senator Garfield: I am not sure but what it could and be very advantageously applied so that you could get good men from both sides.

The Chairman: The next speaker is Judge D. H. Pugh, of Columbus, on "General Municipal Legislation."

Judge Pugh: Mr. Chairman and Gentlemen of the Committee—I am not capable of instructing you on the subject of the general principles of municipal government, and even if our knowledge was unequal and I had more knowledge than you had on that subject, I could not do it after the sort of preparation I have had—only a few hours—so that with your permission I will shift the subject from that to this bill that is now pending before this legislature. There are two kinds of criticism. One is to find fault and the other is to create, to improve. I trust I am not here this afternoon for the purpose of indulging in the first kind of criticism.

I have not seen the other two codes that have been presented to this legislature; I have only seen the one which has been denominated the Governor's code, or the administration code, and I have only had that for a few hours in my hands. I have given as careful attention as I could to some parts of the bill, especially those parts that pertain to the board of public service and the board of public safety.

The first thing notable in this bill, gentlemen, is that it does not purport to be a complete bill in itself, a complete law or code. It refers to and adopts and makes part of itself numerous sections of existing statutes. A somewhat extended familiarity with these statutes satisfies me that not all of the sections of the existing statutes and session acts intended by the framers of this code were incorporated, even by adoption. In the relations of the sections not re-enacted to the new sections in this bill have not been carefully studied, if there was not time to study their relations to each other, such omissions as these would be natural. I simply now point out in a general way that there are some of these omissions. The same criticism, if it can be called a criticism, applies to the repeals.

It is obvious from a cursory examination that not all of the existing sections and session acts intended to be repealed are specifically enumerated. The repealing is done by a blanket provision, namely, that all inconsistent acts are hereby repealed. That will leave to the courts the question what statutes, a great many of them, at least, are repealed when not specifically enumerated. It will be a prolific source of litigation, as has been intimated by Senator Garfield, as such method of re-

pealing always is. All the old sections of the existing statutes and session acts ought, if repealed, to be specifically enumerated in this statute.

But I pass from this minor matter to a more important matter. There is not in this bill that spary differentiation of legislative and executive functions which large experience in American cities and the best thinkers of this state on the subject of municipal government teach us is not only important but necessary. Four years ago the legislature enacted a law providing for a code commission and in that act it commanded the commissioners to draw the bill so that the legislative functions and powers would be rigidly separated from the executive functions and powers. True, you are not bound by that act of the legislature, I do not plead it as *res adjudicata* against you, but it is an evidence of legislative wisdom, a wisdom that is in unison with the experience of American cities and the best thought of this country on the subject of municipal government.

To illustrate my point, I know that Section 72 says that all legislative power shall be vested in and shall be exercised by the council of the city. There is no reservation, no exception, no proviso; and then in another section the framers of this bill have carefully said that the council shall not exercise any other power except legislative power. But Section 99 authorizes the board of public service to establish such departments for the administration of the affairs under its supervision as it may deem proper and it authorizes this board to fix the compensation of all persons appointed or employed by it. Moreover, it authorizes this board to employ such clerks, health and sanitary officers, engineers, etc., as in its judgment may be necessary and proper for the execution of its powers and the performance of its duties.

Now, gentlemen of the committee, all of these powers are legislative, they are not executive. No diagram would be necessary to prove such a simple proposition as that. If fixing compensation is not a legislative function, why does section 82 empower the council to fix the compensation or salaries of all officers, except those that are otherwise provided for in this act or bill?

Again, by section 107 the board of public safety is authorized to make an original appropriation. The word "appropriation" is not used, but that is what it means — an original appropriation of public money for purposes specified therein. The only restriction on the board is that if the obligation exceeds \$500 it shall be first approved by the mayor.

For all expenditures of money to be made by the executive department it is obvious that there should be first an appropriation of the money by the legislative department. Expending the money of the municipal corporation is a purely executive function, but appropriating the money is a purely legislative function. The two cannot be assimilated. The council as the legislative body is entitled to hold the purse strings of the municipal corporation. There are some other examples of the amalgamation of the legislative and executive functions in this bill, but I believe I have stated enough to make clear the point that I make that there is not that differentiation between the two functions and powers that there ought to be in this bill or in any other bill that should be passed by the legislature.

It is not philosophical. Such a blending of the two classes of powers always was and always will be productive of friction and mischief in municipal government. You can not, gentlemen of the committee, reach the New Jerusalem in city government by the distribution of powers that is made in this bill. It is English in principle. That would make it somewhat fashionable to some people. I do not use the word English for the purpose of exciting prejudice against it. It is English. In English cities, you know, the councils exercise legislative and executive powers. The heads of council committees of those cities supervise all the executive work of the cities. If this is the best system, if the board system is the best system, if the English system is the best of blending these two classes, why not make the imitation exact and let the council exercise both legislative and executive functions?

A more vital objection to this bill is that it chops up most of the executive powers and duties and distributes them between the board of public service and the board of public safety. That means, gentlemen, that there will be no unity of administration, that there will be no location of responsibility, there will be no one person who may be quickly and sharply called to account by the people for mismanagement of the executive branch of the government. It is a hybrid system of executive government. The members of the board of public safety will be elected at different times and their offices will expire at different times, and the members of the board of public safety will go out of office at different periods. If either becomes inefficient or corrupt, it will take a long while for the people of the city, the voters, to replace them with better men. The only reliance will be upon the power of the mayor to remove these officers, but you will notice that the power is hedged about with

such conditions and restrictions that it is a snare and a delusion. It allows the person who is about to be removed by the mayor to have a trial, to have counsel, to have witnesses testify, and then it permits an appeal to the city council and it permits and authorizes the city council to reverse the mayor's decision by a two-thirds vote.

The nearest ideal executive government is one executive elected by the people, invested with absolute power to appoint and remove the heads of departments and like power to remove all other subordinate officers but no power to fill the places — a short term, a large power. For every error then under that system of government, for every defect and every act of mismanagement the responsibility can be concentrated upon the mayor. He may be quickly supplanted, having a short term, by a better man.

The democratic system of government in municipal corporations can not be made to work successfully unless the attention of the voters is limited, narrowed down to one issue, to one man or two or three men. The fewer you have to elect the better will be the men that are elected. The fundamental principle of the federal system by which one person has all the power in the executive department and appoints the heads of the departments is simply the principle which every business corporation and every partnership adopts in its business. There is no opportunity for shifting blame from one board to another, or from one member of the board to another. There is no chance for prolonged deadlocks, factional contests or log-rolling; there is nobody to log-roll with, there is nobody to make a deadlock under the federal system. The system of bi-partizan boards, one of which is provided for in this bill, is all wrong. Its only effect is to strengthen that vicious and dangerous feature of municipal government in the United States cities, namely, the conduct of municipal affairs on National party lines. The very system itself, the term "bi-partizan board," implies an appropriation of that principle. That is what it means.

This bill professes to provide a merit system for the appointment of policemen and firemen. Why limit it to these two departments? Why not extend it to the department of public improvements, to the auditor's office, to the treasurer's office and the mayor's office? If it has merit why not extend it to all the departments of the city government? The merit system, gentlemen, has been discussed in speeches, pamphlets and books and there never were brains enough in one man's head or a dozen men's heads to give a satisfactory reason, a reason that appeals to one's

common sense and reason and intelligence, why such a system should not extend to every executive subordinate officer in the city. But the merit system embodied in this bill is an emasculated one. It lacks the essentials of a true merit system. It leaves too much to the unbridled discretion or caprice of the mayor, the appointing officer, and the confirming board, the board of public safety. It is fundamentally wrong in principle to allow the appointing officer and the confirming board, of which the mayor is ex-officio a member, the power to make the rules for the qualification and examination of all appointees in that department. At one time I was quite familiar with all the merit systems which have been provided in the different cities in this country and by Congress, but I do not recall that any of them fails to provide that the officer or the board who or which make the rules or frame the questions for testing the qualifications of officers and conducting the examination shall be appointed by some officer who does not make the appointment or confirm the appointment. It does not require a genius to see why it is necessary that there should be such a feature in the merit system.

I ask your attention to an important omission in the provisions of this bill relating to franchises. It makes no provision whatever for the renewal of franchises. It is true to supply that omission it refers to and adopts and makes part, or rather re-enacts in one sense sections 2502 to 2502e, but lawyers have for years been in controversy and the courts have been perplexed as to the meaning of these sections on the subject of renewals, and what I submit to this committee respectfully is that if this subject is to be legislated about that the legislature ought to clarify the subject of the contention and obscurity and ambiguity that exists in these sections at the present time. As it is probable, I see from the newspapers, that a measure in the nature of an amendment will be offered to this bill to cure certain defects that have occurred heretofore, I mention now and furnish the information to this committee there is pending in the Circuit Court of this county a quo warranto suit against the street railway company of this city in which the company is claiming it has a perpetual franchise on five or more streets of this city; and also another suit in which a recent ordinance has been assailed in the Common Pleas Court. If any measure should be sought to be attached to this bill as an amendment that would legislate these cases out of court or that would give a street railway company a perpetual franchise, this legislature ought to go slow before it passes such a measure as that.

I call your attention to section 103: "The police force shall preserve the peace, protect persons and property and obey and support all ordinances of council and all criminal laws of the state and United States." I don't know why, I can not conceive any reason why the word "support" has been substituted for the word "enforce," which you will find in the old statute, section 2027. The word "support" does not mean anything. A man might sympathize with an ordinance or he might carry it around in his pocket and support it in that way. It seems to me like there is something loose in it.

The question was asked Senator Garfield about the effect of the federal system as compared with the effect of this system if it should be adopted with regard to the mayor building up a machine. Mr. Denman implied in his question that he might under a merit system which provided that two or more should be named as eligibles and the highest might be appointed, that he might under that kind of a system build up a machine; but I call attention to the fact that the Comings bill does not permit any such exercise of discretion. If the Comings bill should be passed by this legislature there would not be any such danger, it could not occur, because the man who is certified as having the highest rank must be appointed.

Mr. Denman: That is what I understand.

Judge Pugh: I thought you thought under that system he could do the same thing as under some systems that are prevailing now, for instance, that the appointing power might select out of one or two whose names are sent in.

In what I have said to you, gentlemen, briefly and in an imperfect way, about this bill there is nothing personal. I am prejudiced against this bill. For the governor and the framers of the bill I have the highest regard, and I think the governor had the right and the power to recommend a bill to this legislature; and if the Nash system, the board system is to be adopted, this bill has some excellent features in it and with some minor changes it might be made to answer the purpose for which it is intended. I have nothing further to say, gentlemen of the committee.

Mr. Williams: Judge Pugh, would you regard a board of public service as being necessary?

Judge Pugh: No, sir.

Mr. Williams: Suppose you had a large city in which the council numbered about thirty persons. Don't you think some board would be

necessary to superintend the different public works or the acts and the ordinances of that council besides the mayor?

Judge Pugh: What kind of a city?

Mr. Williams: Take a city like Cincinnati, where you have about thirty members of the council?

Judge Pugh: There should be a board to superintend the public improvements.

Mr. Williams: There should be certainly some one to carry out the orders of the council.

Judge Pugh: A director of public improvements could perform that function as provided by the Comings bill. Why could three men do it any better than one? On the contrary, one might encumber the others.

Mr. Williams: Would not five men be better than three?

Judge Pugh: No; the more the worse; the fewer the better.

Mr. Williams: In what regard would it be worse?

Judge Pugh: They would embarrass each other in the performance of a single duty.

Mr. Williams: If that board should divide up the work into five departments, and each man continued in one department, would not that be better than to simply have the mayor or some other person?

Judge Pugh: I never knew it was contemplated the mayor should do any such work in any city.

Mr. Williams: Or the director?

Judge Pugh: Or the director should do it. I think one could do it better than five or better than three. Suppose the five should not decide to divide the board into five parts, as they did in Cincinnati, a few years ago, and get into a quarrel about it?

Mr. Williams: Suppose that board should consist of five men and they should divide —

Judge Pugh: If you are going to have the board system at all the fewer in number the better. Three is better than five.

Mr. Cole: What is your opinion as to the length of time for which a franchise should be granted, and at what periods the contract between the corporation and the council should be subject to repeal?

Judge Pugh: About twenty-five years is long enough for a grant. Ten years has been adopted as a very fair test for revising the fare and supplying new terms.

Mr. Cole: Do you believe in compensation to the city in the way of a percentage of the gross receipts being paid to the city, or in concessions being made between lower rates and better service?

Judge Pugh: The lower fare, so that all the people will be benefited. Not a cent of tribute would I take from them of taxes or assessments except on their own property. Every dollar of compensation should be paid in lower fares.

Mr. Painter: I wish to ask the Judge his opinion as to whether under the present existing decisions of the Supreme Court the federal plan would be constitutional?

Judge Pugh: I don't know why not. If it is made applicable to all the cities of the state I should say most decidedly it is constitutional.

Mr. Willis: Do you agree with Senator Garfield in his opinion that it is unnecessary to legislate on the subject of franchise legislation at this time? I understood that to be Senator Garfield's opinion.

Judge Pugh: It is a subject you can divorce from the subject of the organization of municipal government. It does not necessarily belong to it. I want to say in explanation the reason why the code commission made provision for that was because the legislature commanded it to do it. It had no discretion about it. It had to revise all the municipal laws. I don't think it is necessary to legislate on that. You can leave it for consideration at some other time.

Mr. Guerin: I am not familiar with the provisions of the code which was introduced in the legislature known as the Pugh-Kibler code. Did that code contain provisions other than the provisions that were necessary for the organization of cities and villages? In other words, did it undertake to cover any general subjects other than the organization of the municipalities?

Judge Pugh: Not except the schools. It struck out of the school laws all the classifications that have been pronounced unconstitutional by the recent decision of the supreme court.

Mr. Guerin: On general subjects like the granting of franchises and the renewal of franchises did that code cover any general legislation outside of that necessary for the organization of municipalities?

Judge Pugh: No, sir, I think not; although there might be a difference of opinion as to whether some of them were incident to municipal corporations, but we had to revise all the municipal laws that we found on the books.

Mr. Guerin: I would like to ask another question and that is as to your opinion on the question as to what should be included in a municipal code, that is, what class of legislation?

Judge Pugh: The legislature has boundless discretion about that and it could confine it to the frame-work, the mere anatomy of municipal government, as the Comings bill does.

Mr. Cole: Just one other question: You say there is no provision in the statute now for the renewal of franchises?

Judge Pugh: There is a provision, but nobody can tell what it means. I think it ought to be made definite as to what the powers of the council are in renewals. For instance, whether it is necessary to have the consent of the people along the streets on which the road is located. That is not clear. It is not clear whether the council has to advertise for bids to give other companies or other corporations or persons an opportunity to bid for a franchise that is to be renewed. That is not provided for by the statute. There is no provision on that.

On motion the committee took a recess for ten minutes.

On the committee again coming to order, the Chairman said: The next on the program is Mr. T. H. Hogsett, of Cleveland, a member of the State Bar Association, who has been through the code of the Governor and will speak to us somewhat on "Delegated Powers," a subject which has been discussed pro and con here before this committee by the various speakers.

Mr. T. H. Hogsett: Mr. Chairman and Gentlemen—No doubt the gentlemen who have preceded me this afternoon, at least Mr. Garfield and Judge Pugh, have gone over this question pretty thoroughly and I don't want to take a great deal of time. I have just gotten through with the other committee and I hope I will not take as much time here as I did there.

I have gone through this code with some care, together with the other members of the committee appointed by the State Bar Association, with the view of determining, if possible, or to our own satisfaction, at least, whether the provisions of this code would meet the requirements of the constitution which authorizes the General Assembly to provide for the organization of cities and incorporated villages. We examined numerous authorities upon that question and applied such fundamental principles as we could to the provisions of the constitution and became clearly satisfied in our own minds that this bill is sufficient to meet the

requirements of the constitution. I know of no doubt entertained by any member of the committee on that subject. The question of the propriety of a plan of this kind is a different proposition altogether. For myself, I believe a different plan than that provided by this bill would be more appropriate and furnish better facilities and would be better for the government of the municipalities of this state.

The Constitution provides, which no doubt has been repeated to you over and over again, that the General Assembly shall provide for the organization of cities and incorporated villages. There has been some contention that I have learned of to the effect that that did not mean that the legislature should provide the organization but that it meant simply that the legislature should say to the municipality "Organize and the municipal corporation could do the rest.

The question has been suggested as to whether or not heads of departments could not be appointed or provided for by the council of the municipality. No one has asked me as yet whether or not the council might be provided for by the mayor. My construction—and I speak now of the construction given to these provisions by our committee—is that it is essential for the General Assembly to provide the machinery with which the municipality may operate. In other words, that the General Assembly shall provide the organs through which it may breathe, have life, perform the functions of a municipal corporation, that those agencies should be made complete in the provision made by the act of the General Assembly; that the performance of those duties required by the agencies thus created or through the agencies thus created, would necessarily imply the right in the agent or agency to employ the means essential to carry on the work of that department or to perform the business of the corporation to be performed in that department.

Organization means something and when the framers of the Constitution said that the legislature should provide for the organization of municipal corporations in cities and villages they meant something more than that the General Assembly should say to the municipal corporation "Organize" or that "You may go and hold a convention and provide such agencies as you think you may require to perform the business of that particular corporation." I think it meant and must be taken in connection with the other provision of the Constitution requiring all laws to have uniform operation that the agencies must be provided, made complete, by a general law enacted by the General Assembly. There is one thing very certain to my mind. There can be no question

that such a bill would be constitutional. Whether any other bill would be constitutional or not is a different proposition. I have not ran across any but what presented some difficulties to my mind in view of the authorities upon that subject.

There are a few cases in which the Supreme Court of this state has defined the authority of the General Assembly under this provision of the Constitution. I call your attention to the case of the State ex rel the Attorney General against Hawkins, in 44 Ohio State and the opinion of the court on page 110. In that the power of the legislature over municipal corporations was discussed. Says the Court:

"The organization and government of cities is left, by the constitution, to the General Assembly, with the requirement (Art. 13, Sec. 6) that it shall, by general laws, provide therefor; and the entire system of municipal government in this state has, in the exercise of this power, been created by the legislature. Not one of the officers of a city or village has any recognized existence in the Constitution. It is different as to county and township officers. See article 10, relating to county and township officers. And here it will be observed that section 6 of this article provides that: 'Justices of the peace, and county and township officers, may be removed in such manner and for such cause as shall be prescribed by law.' There is no requirement that the power of removal, that may be prescribed by law, shall be conferred on the courts, for the legislature is to provide the manner, as well as the cause of removal. In the exercise of this power, the legislature has provided for the removal of county treasurers by the county commissioners Secs. 1126 and 1127, Rev. Stats. The power has been frequently, and wisely, exercised; and, so far as we can learn, has never been questioned in the courts. This section does not in terms extend to officers of municipal corporations; and, for the obvious reason that, as already stated, such officers have no recognized existence in the Constitution. They are to be created and provided for by the legislature.

There are a number of cases decided in this state, another case in 29 Ohio State, page 113, to which I might have called your attention, but I will not take time to read it, the case of the State ex rel. Attorney General vs. Covington, in which the doctrine is recognized as it is announced in that 44 Ohio State case.

Now, there are, as I say, some cases decided in this state that bear some upon this proposition as to what organization means. I don't find it in any place as applying to cities and villages particularly, but I find

a number of cases in which the question of the organization of counties has been discussed, and in those cases the court say:

"A county completely organized has been held to signify a county having within itself the necessary means of performing its functions independently of any other county, with its lawful offices and machinery for carrying out the affairs and performing the duties belonging that class of corporate bodies."

Organization of cities and villages means to provide those agencies, those organs, with which the municipality can exercise its functions as such and carry on the business of the municipality.

Now, I say that that is the duty of the legislature. It seems to me clearly so. Now I refer to the question that was suggested to me some time during the day. That was this: Why can not the council be given authority to create heads of departments? Let me state this proposition, then I will see if I can answer that question by asking one. Why could not the legislature say that the question of whether there shall be a council or not shall be determined by the mayor? If we are right in our construction that these agencies may be created by the legislature, still it would not be within the power of the legislature to delegate that authority to some body or person in a municipality; and if you empower the city council to create agencies or empower the mayor to create this or that or the other agency, you would be delegating that authority which has, through the Constitution, been placed in your hands by the people. You can not return that power to the people without a constitutional amendment. They have imposed that authority upon the General Assembly through the constitutional provision requiring you to provide the agencies with which the municipal corporation may exercise its functions as such.

I am simply making these suggestions as I go along without going into the question very extensively. I have looked over this bill in its present form. There are some changes in it, some changes made since we looked it over. I still believe that the provisions come within the power conferred by the constitution, with the exception of one section, which provides: "Nothing in this act shall be construed to alter, repeal or amend an act entitled 'An act to create a board of supervision in the erection simultaneously of public, municipal and county buildings' passed May 6, 1902, etc. Now, I think that that act is special legislation, is a special act and would be unconstitutional. That is my recollection. That provided for a board of supervising architects to supervise the erection

of public buildings in the city of Cleveland. That was the reason that act was passed; whether it was special or general I don't now call to mind, but my impression is that it is a special act.

Mr. Thomas: Then if it is not a special act it will be all right?

Mr. Hogsett: It would be all right, but if it is a special act this provision would not make it constitutional, because this simply is declaring an unconstitutional law to be constitutional.

Now, to make a valid act, it occurs to me that the provisions of that law should be made general with the board in a municipality to employ those men in carrying out the construction of public buildings. That is the only objection that I would make to that act. Some question has been made as to the constitutionality of the provision which would give Cleveland two police judges and the other municipalities only one. I find no trouble with that at all. All I think I need do with that, gentlemen, without taking the time to argue that proposition to you, is to cite you to the sections of the constitution and to an adjudicated case that seems to me to clearly settle that question. Section 1 of Article 4 provides:

"The judicial power of the state is vested in a supreme court, circuit courts, courts of common pleas, courts of probate, justices of the peace, and such other courts inferior to the supreme court, as the general assembly may from time to time establish."

That gives the general assembly from time to time the right to establish other courts than those specified.

In section 10, article 4, it is provided:

"All judges, other than those provided for in this constitution, shall be elected by the electors of the judicial district for which they may be created," etc.

That implies, at least, the authority to make a judicial district where you provide under section 1 for additional courts that the general assembly may from time to time provide. Then there is another provision, section 15, which says:

"The general assembly may increase, or diminish the number of judges of the supreme court, the number of the districts of the court of common pleas, the number of judges in any district, change the districts, or the subdivisions thereof, or establish other courts," etc.

Now, in a case involving the constitutionality of the act creating the insolvency court for Cuyahoga county, reported in 65 Ohio State, 370,

decided at the September term, 1901, the court reviews this language in this way:

"The inquiry here may be further reduced by the concession that the statute is limited in its operation to a single county. That section 26 of article 2 of the constitution imposes a limitation upon the legislative power conferred by section 1 of that article, is not disputed. But, by section 1 of article 4, there is a special grant of legislative power upon a particular subject, which itself prescribes the rule for the government of the legislature in the exercise of that power. It provides: 'The judicial power of the state is vested in a supreme court, circuit court, courts of common pleas, courts of probate, justices of the peace, and such other courts inferior to the supreme court, as the general assembly may from time to time establish.' The power is here undoubtedly granted to the general assembly to create courts other than those enumerated in the section; and the material inquiry is, what other courts may be so created? The answer is found in the language of the section, which is, 'such' other courts 'as the general assembly may from time to time establish.' That language vests in that body full power to determine what other courts it will establish, local, if deemed proper, either for separate counties or districts, and to define their jurisdiction and powers."

Now, taking this constitutional provision and the construction that has been so recently given by our own supreme court, it seems to me clear that the authority rests in the general assembly to create municipal judicial districts, and whenever it has created such districts, to provide for one or more judges in any one of those districts as the necessities of the particular district may require.

Mr. Thomas: Under that provision is it possible to provide the police court for the larger cities and not provide one for the smaller cities?

Mr. Hogsett: That question I have not given any consideration at all. The question of imposing the powers of the police court upon the mayor has been decided by our supreme court in some case, I don't now remember what it was, but at the time we were looking over this code we were considering only municipalities with a population of ten thousand or more, and considered that in all such cases it would not be inappropriate at least to have a police judge. Now, whether in a municipality of six thousand, we will say, the powers of a police judge may be vested in the mayor, I am not sure. That matter I have not considered, but will be very glad to give the gentleman the result of any investigation on the subject.

Now, passing from that, and I hurry along, I want to say something about this plan. This plan I am satisfied meets the requirements of the situation. It is not the only plan that will meet the requirements of the situation, but agencies for the government of municipalities could be provided by the legislature which to my mind would furnish a simpler and more efficient government for the municipalities than that which is provided for by this act.

I don't believe in the government of municipalities by what is called the board plan. I believe that the simpler and the more convenient government and the one which may be adapted more easily to the government of all the municipalities or all of the cities of this state ranging from five thousand to five hundred thousand, is the federal plan, something similar to what we have had in Cleveland, but with certain modifications.

I think there are several features of this bill that will not inure to the good of municipalities. In the first place, all of the legislative power is vested in the council. That is right. The legislative power should be vested in the council. The legislative and administrative or executive departments should be separated and the legislative body should be purely legislative; the powers of the administrative and executive branches should be purely executive and administrative.

I believe in the centralization of authority. Under this bill it is provided that there shall be elected three members to constitute a board of public service, that there shall be appointed by the mayor a bi-partisan board consisting of four members called a board of public safety. That board of public safety has charge of the police and fire departments; that is, the work that they do in those departments in actual practice is to buy hose and to buy ladders and to buy oats for the horses and things like that and draw their salary. Now, it does not take four men to do that. One man can do all that work and he will do it better than four. The head of that department has no business interfering with the discipline of the men in that department, he does not know anything about it. There is a man at the head of the fire department and a man at the head of the police department, each of whom knows more about the operation of the department and the necessities of the department and the handling of the men and the disciplining of the men in the department than ten men that you could go out and appoint or elect. They have got into the heads of those departments because of their efficiency, they have got there because they have earned it as being efficient men in the department. They have been there for years, they

know what the necessities are. Now, what can a director of that department or a board at the head of that department tell the chief about how he should discipline the men in the department when there probably would not be a man on the board, or the whole board together, could not catch a thief in an alley in a week? So it is perfect nonsense, in my mind, and I have seen it in actual operation and I know that one man can do that work better than two and a great deal better than four. That is all they have to do, to look after the police and fire department, although I was informed by Senator Longworth in the senate this afternoon that they had determined to put under the supervision of that department the board of health. That leaves everything else in the city under a board of three elected by the people, all elected at once, all go out at once. They have patronage at their disposal to run the streets, alleys, public grounds, wharves, landings, rivers, harbors, parks, all the reformatory institutions, workhouses, everything of that kind at their disposal, and an inclination after they have once run for office, if they have had it once, to run a second time, and that breeds a kind of inclination to have nobody in the department that won't support that board. That means what? The building of a political machine.

The curse of the administration of municipal affairs to-day is the political influences that are exercised in the administration of the affairs of the municipality. Now, the business of that corporation ought to be taken care of like the business of any other great corporation and the business ought not to be made secondary to some political machine.

I think I know the cure for that, and I don't care much what the structure is if you will have at the foundation of it a merit system applicable to all persons in the employ of the city, except the heads of the departments and their confidential clerks and secretaries, with the appointing power in one place and the power of removal in another, and have the system defined in detail. Then you will not have the removing power making a place by the removal of some man from the service for some political friend or in payment of some political debt.

They say that this civil service is a good thing in some departments. They have had it, they say, in Cincinnati, they have applied it to their police and fire departments. They tell me they don't know down there the politics of any of their appointees in either the police or the fire department. They don't pay any attention to politics but go on and attend to their duty, and that is the result of the application of the merit system that they operate down there.

We have had a kind of merit system in Cleveland. It has been better than none, but it can be made better, and it has been a good thing, and they will all tell you so. Firemen and policemen will insist to-day that a merit system to be applied to their departments at least, that they be permitted to go forward in the performance and discharge of their duties without being hampered by any political influences or political obligations, assumed or otherwise, but that they may go forward in the honest discharge of their duties without the fear every moment that some politician who wants to build a machine or who has some political ambition to gratify or satisfy will swoop down upon them and cut off their heads because they have not done something that will result beneficially in a political way to that person in power. They want to be free from that. It is right that they should be and that their entire time, skill and ability and their best energies can be devoted to the good of the service; and whenever they become inefficient fear of removal is there. But when the power of removal is to be exercised, the man who removes and the power which removes don't know who is going to fill that place, because the man who fills that place is provided by another power, but they still have the power to remove him if he proves to be inefficient. Separate the appointing power from the power of removal and you have cured the evil of removing men for political purposes.

Now, if it is a good thing with these departments, why isn't it a good thing to apply to all departments, let me ask, and I ask any man to answer me that question. These people all say it is good in these departments and I say that I believe that with that kind of a system at the foot of your structure, base your structure upon that kind of a system, and it makes but little difference whether it is board or federal plan or what it is. But to make a system which would operate simply and to the best advantage, in my judgment, would be to put, as I say, the merit system, then build upon that what we call the federal plan of government. Provide for your executive, the mayor, provide four heads of departments, the director of law, the director of public works, the director of public safety, if you so choose to call him, and the director of accounts.

Now, where is there any municipality of five thousand or more that can not operate with that and that would be burdened by that kind of plan? Their clerk might be made ex-officio their director of accounts, or the director of accounts might be made ex-officio clerk of the mu-

nicipality. You would have one man then looking after your public works, you would have one man looking after your police department, that is, the financial end of it, you would have one man looking after your law department and one man looking after your accounts; and you would have each of those men responsible to the executive head of your system and the executive head of that system responsible to the people that put him there, and with that kind of a government you have met the necessities of the corporation of five thousand and are able to meet the necessities of the corporation of five hundred thousand population.

Now, it seems to me that this plan, so simple, so efficient, is the thing that ought to be adopted, and above all that there ought to be adopted at this time a good merit system. They say in this bill here that there shall be a merit system applicable to the fire and police departments. That means nothing. I mean there shall be an examination as to qualification of persons who are applicants for a position. The power of removal shall be in one place and the power of appointment in another. They shall be removed only for inefficiency and shall not be removed for political or religious reasons.

That is all right, no trouble about that, but why don't you say so? What is the objection to defining just what you mean so that you will have a universal operation of your system in the state and one that the people of the state will understand what you mean when you say a merit system?

If it was not a good thing what is the use of putting it in there at all? They said by that it is a good thing, they said it to you, and answer me now, if it is a good thing why isn't it good for that and every other department?

I hope that this general assembly will see its way to build that kind of a machine for the government of the municipalities of this state.

Mr. Guerin: I want to ask whether or not the legislature would have a right to specify that a city might at the option of its council provide a board of public service, a board of public safety and other departments created by the administration or Nash code, specifying the duties of the officers of those departments, the manner of their creation, leaving that entirely optional with the council to decide whether or not they should have those officers?

Mr. Hogsett: That would not be in accordance with my notions under the constitution at all. I think the agencies must be created by the general assembly and those agencies made complete.

Mr. Guerin: Let me ask you this: You stated in the Nash code there was nothing you knew of that was unconstitutional. I will ask you to turn to line 1144, Section 99, which reads thus:

"The board of public service may employ such superintendents, inspectors, engineers, physicians, district physicians, health and sanitary officers, matrons, wardens, guards, clerks, laborers and other persons as may be necessary for the execution of its powers and duties, and may establish such departments for the administration of affairs under its supervision as it may deem proper."

There may be some difference there, but it seems to me a difference without and substantial distinction at all.

Mr. Hogsett: I think I can make that clear to you in a moment. An agency is the board of public service, another agency is the council, another agency is the board of public safety, another agency is the mayor. They are to carry on the business of the corporation. In the carrying on the business of the corporation with these agencies, they are empowered to employ the hands and means necessary to do it.

Mr. Guerin: But this says they are to establish such departments.

Mr. Hogsett: Certainly. If the board of public service had under its charge the water department, the park department and the street department, it would have the right to treat those as separate departments and have them independent of each other in the orderly prosecution of the business of the corporation in that department.

Mr. Guerin: Suppose the Nash bill should specify that all the duties now imposed by this bill upon the board of public service and the board of public safety should be lodged in the city council, and the city council should create such department and employ such laborers as are necessary to carry on the powers conferred on the council?

Mr. Hogsett: The difficulty about that would be the lodging in the one body which is supposed to be a legislative body the administrative powers of the government as well. You must keep in mind the distinction, keep them separate. One is purely legislative, and the other administrative. Now, the carrying on the work in the waterworks department, for instance, the cleaning of the streets, keeping them in repair, open, free from nuisance, the doing of that is administrative. Your suggestion is that the council have charge of that, that that power be lodged in the council. Unless you want to put the legislative and administrative branches in one, if you want to keep them separate, you cannot do that.

Mr. Guerin: I am not talking about what we might do, but in this code I cannot see why if the council has these powers and duties delegated to it, it could not have the same right to create departments and employ labor as your board of public service now has, to which is delegated certain duties.

Mr. Hogsett: Do you mean to create additional agencies for the performance of the duties? Your proposition is this: Could not you delegate the power to the council to create the board of public service?

Mr. Guerin: Yes, if in the discretion of the council it be necessary?

Mr. Hogsett: I say no. It is the duty of the General Assembly to provide that board of public service, if there is to be one, as one of the agencies to municipal corporations to exercise their functions as such.

Mr. Guerin: Supposing there should be a park board, why should not that be specified here?

Mr. Hogsett: There should be, if there is to be a park board; but suppose you hire a man to go and look after the parks at a dollar and a half a day, couldn't the board of public service do that?

Mr. Guerin: Does the term "department" preclude the appointment of a board at the head of that department?

Mr. Hogsett: You have already provided a board at the head of the department, the board of public service.

Mr. Guerin: It would have supervision over it, but it might have more than one man at the head of that department.

Mr. Hogsett: Certainly. They might have ten men at the head of that park, if it was necessary. It may put in as many men there as are necessary to carry on that branch of the business; but that branch of the business would still be carried on by the agency known as the board of public service.

Mr. Guerin: Why could not that be the city council, coming back to the original question?

Mr. Hogsett: You can give the administrative powers to the council if you want to.

Mr. Stage: I am interested in this same question that is bothering Mr. Guerin, and I confess I am bothered to the same extent that he is. I can see there would be a mingling of administrative and legislative powers by endowing the council with the power to appoint departments. I will assume this case: Suppose that the legislature provided for an administrative council of five, I don't care whether you call it that, you may call it by any other name, but an administrative council of five

for every municipality, and endow it with power as it here endows the board of public service to establish such departments as would enable it to carry out the powers with which the municipality is endowed by the legislature. Do you think that would be constitutional?

Mr. Hogsett: Do you mean to lodge all the powers in one body and just have one agency?

Mr. Stage: One agency, which will create such departments for the administration of the powers delegated by the legislature?

Mr. Hogsett: I think what is contemplated by the provision is that the agencies necessary for the city to have in order to carry on the business of the municipality must be created by the General Assembly. Those agencies may employ such means by division of their work or making different departments as may be necessary to carry out the business or to perform the business of the corporation. But my point is this: If you are going to have the mayor as one agent and the council as another and don't propose to have any more, you may confer all those powers. If you are going to have a legislative and administrative and executive all in one, that is one proposition, but if you are going to have the executive, the legislative and the administrative separate from each other, you must provide those agencies in these departments.

Mr. Stage: Would not the appointment of an administrative council combine what is here sought to be placed in the board of public safety and the board of public service?

Mr. Hogsett: I do not see why not.

Mr. Stage: Why not then have four or five boards?

Mr. Hogsett: You may make as many boards as you want. When you get in a city of five thousand you don't want so many boards.

Mr. Stage: It seems to me your plan is this: That having established one agency which it is the duty of the administrative to supply, that that agency might create such sub-agencies as are necessary to carry on the work of the municipality?

Mr. Hogsett: Your employes, like the men on the street. You may say the council shall have power to employ the street gang.

Mr. Stage: This board of public service, in establishing departments, might establish a department of waterworks, a department of libraries, a department of health, a department of charities and corrections, which must be according to the definition equally agencies for carrying out those matters as the board of public service itself.

Mr. Hogsett: Now, to test your proposition. Suppose you have a director of accounts and the director of accounts keeps the journal, the ledger and the day-book, each of those is a separate agency, according to your suggestion?

Mr. Stage: I do not see where you can draw the line. I would like to call your attention to one other point which has to do with the mingling of legislative and administrative functions. Section 82 provides: "Council shall fix the salaries of all officers, clerks and employes in the city government." Do I take it by that that the fixing of salaries is taken by the framers of this bill to be a legislative act?

Mr. Hogsett: Certainly, the General Assembly could do that. They did it in all former laws, fixing the salary of the mayor and the heads of departments.

Mr. Stage: Section 99 says the board of public service shall fix the compensation and bonds of all persons appointed or employed by the board. In your opinion that is a mingling of legislative and executive functions?

Mr. Hogsett: Yes. It is giving to the public service board all the powers that they can.

Mr. Denman: Speaking of the matter of the merit system and the removal of officers, Mr. Hogsett, do you think it would be advisable that before an officer could be removed he should have a hearing, even with the removal power being lodged somewhere else than in the appointing power? I agree with you that the appointing power and the removal power should not be in the same person, but should there not also be a hearing on charges preferred?

Mr. Hogsett: I suppose the people would feel better if there were a hearing, but if I had my personal notion about that applied I would not have any hearing. I would have, for instance, in the police department the chief of that department. If there is an inefficient man there, a man who for any reason than a political or religious reason should be removed, remove him. Then you are accountable to the head of that department or to the civil service commission, whatever it may be; but there seems to be a general impression that there ought to be some kind of a hearing provided for. I have not any objection to that, unless you have tribunals such as we have in Cleveland. I object to that, a tribunal composed of the mayor and the director of law and the president of the city council. You want to get a non-partisan tribunal in some way that will have no regard except for anything affecting the merits of the case.

Mr. Denman: If the removal power was lodged, then, with somebody else, wouldn't it be very easy for that board and the appointing power, for the purpose of a machine, to combine, if there was no hearing?

Mr. Hogsett: There might be. I simply say this question of not having a hearing is a kind of a notion of my own that I find considerable opposition to, even in my own mind. I find considerable opposition to it in the most of cities, so I don't think it would be objectionable to put it in.

Mr. Willis: I would like to repeat the question I asked last night. There was under discussion before this committee another bill in the operation of which, it seems to be conceded by all hands, we would have diverse government. My question was, could that law be said to operate uniformly throughout the state?

Mr. Hogsett: It could not be said to do so if it did not.

Mr. Willis: Do I understand you to say it would not operate?

Mr. Hogsett: You might have as many different governments as you had municipalities.

Mr. Painter: I would like to ask Mr. Hogsett a question about a matter that is not touched on. We have several cities that come under the law providing a town of five thousand inhabitants shall be a city that don't desire to go back to villages, yet the government provided in the Nash Code seems to be very cumbersome, especially in regard to the city treasurer. The speakers on the Nash Code the other day suggested we dodge that matter by providing that the county treasurer should be nominated and elected city treasurer. I want to ask your opinion of that?

Mr. Hogsett: I don't know of any provision that would disqualify the county treasurer from also being the city treasurer, but if we are going to have that in one city, let it be of uniform operation.

Mr. Cole: By what method would you have public utility corporations compensate the city or the citizens for the use of the franchise?

Mr. Hogsett: I would have them to carry for the lowest rate of fare.

Mr. Cole: What criticisms have you to offer upon the franchise provisions of the Nash Code?

Mr. Hogsett: I have not given a great deal of consideration to the franchise provisions, because I don't think franchise provisions in the municipal code are so urgent at this time as that the real structure necessary for the proper government of the municipalities of this state.

ought to be lost sight of for the purpose of considering the public franchise subject. I think that is a subject of sufficient importance to come up at a regular session as an independent measure; but there is one suggestion that I will make, and I think it is fair criticism of the provisions of the Nash Code. They have a provision there that a franchise shall be granted to the company offering the best terms with reference to fare, rental and repairs and a lot of other things; that they shall take into consideration, for instance, the amount that the bidder offers to pay into the city treasury out of the gross receipts and how much street it is going to repair, how much of the paving on the street the company is going to do.

Now I believe that the people of the municipality ought to have the right to embody any of those conditions in an ordinance if they see proper to do so, but that the bidder should be apprised of those conditions. For instance, now: "Mr. Bidder, you are going to have to pay two and a half or three or four or five per cent. into the treasury and you will have to pave between the tracks and so much of the street. Now, then, when you bid, having to do those things, what is the lowest rate of fare?" Then you have uniform bids, they are all bidding for one thing and there is no question about determining who is the lowest bidder. If, for instance, you have one company coming in and saying, "I will not do any such thing, but I will carry for such a rate of fare," and another comes in and says, "I will carry for such a rate of fare, but I will do some paving;" another says, "I will carry for such a rate of fare and do some paving and pay a certain percentage of the gross receipts into the treasury," now, all those bids come up to the council for consideration. They are going to try to make up their minds which would be for the best interests of the city, and how are they going to determine that? The only way that that can be fairly determined is for the council in the first place to provide the conditions and let the bid be solely on the question of rate of fare.

Mr. Cole: Is there anything in the governor's code that would prohibit the council from passing such an ordinance and giving their specifications in their bids?

Mr. Hogsett: That provision in the code, if I call it to mind correctly now, might be a little involved, if that was supposed to be the purpose.

Mr. Cole: What is your position upon the question of perpetual franchises?

Mr. Hogsett: I have not any position on perpetual franchises at all. I do believe that there should be municipal control of public utilities. On the other hand the people would get along better with the owners of a public utility, they would protect the investment and they would get a fair return if they knew what they were protecting and what kind of a return they should make in order to be fair. I think that the Massachusetts system is a good system. I believe it is.

Mr. Stage: In that connection I would like to ask Mr. Hogsett whether he believes in the limitation of franchises for a fixed term?

Mr. Hogsett: The Massachusetts system, as I understand it, makes the franchise terminable at any time.

Mr. Stage: Do you think that is better than a fixed term?

Mr. Hogsett: I am inclined to think that is the system I would adopt if I were to do what I believed to be for the interests of all concerned.

Mr. Stage: Under such a system as that would you advocate a fixed term of 15, 25, 50 or 100 years?

Mr. Hogsett: If I could not get the other I would get the best I could, with as much municipal control as I could get.

Mr. Worthington: I would like to know if in your judgment a city of six thousand would be required to have all the heads of departments that a city of 300,000 would require?

Mr. Hogsett: I see no necessity for having any more than four heads of departments in any of them, and I don't think four heads of departments in a city of six thousand would be cumbersome. You have the solicitor, you have somebody to keep the accounts, there are two heads. You have somebody to look after the public works, there is another, and you have the head of the fire and police, that is another. A city of six thousand could have those and could not be very much burdened. The compensation, of course, could be made according to the services necessary to be rendered in the municipality.

Mr. Willis: Doesn't this present code require more than four?

Mr. Hogsett: You would have to have men to look after your police and fire in towns of five or six thousand. You would have more men in a board than you would have in a department in some of them, probably.

Mr. Willis: What I want to know is, whether under the Nash code a city of six thousand would require to have all the heads of departments that a city of 300,000 would have?

Mr. Hogsett: I think it should. The department would not necessarily be so large.

Mr. Willis: I mean the heads of departments. Wouldn't it be possible to have a code that would not require a city of six thousand to have as many departments as others would have? Would it be possible for the legislature to enact a code that would require a less number of heads of departments in a smaller city than in a larger one?

Mr. Hogsett: As I have said, I think the law must be uniform and the law must create the agencies to carry on the business of the municipality.

Mr. Silberberg: Could not one head fill three departments in the smaller cities?

Mr. Hogsett: Yes.

Mr. Williams: I do not see quite the difference between the legislative power and the administrative power. Is not the conferring on the board of public service the right to fix salaries giving them legislative powers?

Mr. Hogsett: I think that is in the nature of the legislative power.

Mr. Williams: Do you think the Nash code sufficiently defines that?

Mr. Hogsett: I would not give that power to any board of public service. I think the board of public service provided for in that code is simply something that municipalities ought not to have. I don't think it is right, and I think the powers of the board, and the fact that they are all elected at the same time and all go out at the same time, and the things they have in their hands and under their control makes that provision one which I would not indorse under any circumstances.

Mr. Williams: Would you suggest, then, that the board of public service, if we are to have one, should have their terms expire at different times?

Mr. Hogsett: If I was going to have a board of public service I would adopt the federal plan and have one man at the head of that department. Now you want to put three at the head and elect them. Put one man at the head of that department, appointed by the mayor, and don't give that man all of the authority to fix the compensation and fix the bonds and everything of that kind of the employes of the department, but let the bonds and compensation and things of that kind be fixed by the council. Don't give that department so much power. Have it so that it is responsible to somebody, responsible to the central authority,

namely, the chief executive. Don't divide the executive authority or executive power. Make him responsible to the chief executive.

On motion, the committee then adjourned to meet at 9 o'clock A. M, on August 29th.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

75TH GENERAL ASSEMBLY, EXTRAORDINARY SESSION.

COLUMBUS, OHIO, SEPTEMBER 4, 1902.

10:00 O'CLOCK A. M.

The special committee on Municipal Codes of the House of Representatives met in Legislative Hall at 10:00 A. M., Mr. Comings presiding. Under the program arranged by the sub-committees on Program the sessions of this day are devoted to hearing addresses from the mayors of cities and villages.

On roll-call, the following members responded to their names:

Comings,	Stage,
Painter,	Ainsworth,
Guerin,	Huffman,
Price,	Sharp,
Cole,	Thomas,
Williams,	Brumbaugh,
Metzger,	Silberberg,
Worthington,	Hypes.
Denman,	

A motion was carried to recess ten minutes in order to ascertain if Mayor Fleischman of Cincinnati, was present and prepared to address the committee.

After a recess of ten minutes, the committee was called to order by the Chairman.

The Chairman: I am very happy to announce that Mayor Fleischman, of Cincinnati, is present this morning, and will occupy a few moments in speaking upon the Code.—Mayor Fleischman, of Cincinnati.

Mayor Fleischman: Mr. Chairman and Gentlemen—If I were to speak from the Cincinnati standpoint alone, there might be very many suggestions that I could make, from knowledge that I have gained during the experience of the last two years, but I appreciate that the Legislature has a very difficult task before it in undertaking to satisfy so

many different cities, and so many cities of such different sizes. It is not an easy matter, I know, to satisfy a city of five thousand people with the same form of government used for a city of three hundred thousand.

There are one or two different things that suggest themselves to me, however, in my study of the Code, and one of them is, the size of the Board of Public Service. I feel assured that, from a Cincinnati standpoint, a board of three members cannot do the work, with justice to itself and to the people. The Board of Public Service that we have to-day consists of five members, and I know that they can hardly do the work they have to do to-day, while a new board of three members, as contemplated by the new code, will have a great deal more work to do. For instance, they have charge of several charitable institutions, have charge of the Work House, the Hospital, the Reform School. It was suggested this morning that it might not be a bad plan if the Work House and the Reform School were placed in the hands of the Board of Public Safety, as suggested by the Code. Another point which has occurred to me—and this is absolutely my own view—is that it would not be a bad idea or a bad plan if the Board of Public Service were an appointive, rather than an elective board; it would rather place the responsibility of the city government in the hands of the chief executive of the city, and I have always been in favor of a centralized responsibility in city governments.

I do not know as there is really any other suggestions that I have to make. I believe that the arrangement of council under the new bill is about as good as can be made; council should be given the power that is contemplated under the Code. I think that these suggestions about cover all the points that I have considered, though it covers them rather briefly. There are, of course, reasons for a number of these things, and I shall be glad if any one desires to ask any questions, to give my reasons for any of the changes that I have suggested.

Mr. Stage: I understand you, Mayor Fleischman, to say that you believe in a centralized responsibility?

Mayor Fleischman: Yes.

Mr. Stage: Wouldn't it be well to have the Board of Public Safety elected, rather than to have a board of three or five, appointed by the executive?

Mayor Fleischman: We have found that our board plan works very well in Cincinnati.

Mr. Stage: Would you say, from your experience in Cincinnati, that the so-called Federal plan, rather than three or five, would not be better?

Mayor Fleischman: I don't know as it would be better; no, I think that a board of three or five, with this board divided into different departments, dividing its duties; that is, each member of the board to have charge of a department to be designated by the board itself, but as a body, constituting a board to have entire charge, oversight, would be better.

Mr. Stage: I believe in centralized responsibility so far as the chief executive is concerned, but not so far as the board is concerned.

Mayor Fleischman: I believe in centralized responsibility, so far as he is to appoint this board, and have the board responsible to him. As at present contemplated, the board is separate and apart; it is not responsible to anybody.

Mr. Stage: You think that if there were trouble or mismanagement or malfeasance, under the new board, you think it would be difficult to put your finger on the particular man who was responsible. Would not that be so under any system of a board of three or five?

Mayor Fleischman: Not necessarily; their meetings are open, their records are there to show what they have done or what they have not done, and what each man has or has not done.

Mr. Stage: Hasn't it been the experience that we have had trouble with the Boards of County Commissioners all over the state of Ohio because of divided responsibility?

Mayor Fleischman: I don't believe that there is a divided responsibility in the case of a board that is an appointive board in a city, and in this board having charge of the public works of the city, each member having charge of a certain department of the public works of the city—that is my idea of the board plan. I think there should be a board composed of a certain number of men, each man to be designated by that board to have charge of a certain department of the public work under the board, but all of them to constitute a board to vote upon certain points that may come before them.

Mr. Stage: That is practically what our Board of Control in Cleveland amounts to now, composed of all heads of departments.

Mayor Fleischman: I judge it is, yes.

Mr. Price: Your notion, Mr. Mayor, is that the board should be a

legislative body, and at the same time be so constituted that it can be an executive?

Mayor Fleischman: Well, it should be an administrative, rather than a legislative body.

Mr. Price: But I mean, to have both powers at the same time?

Mayor Fleischman: No; I think the legislative part should belong absolutely to council; I don't think the board should be a legislative body.

Mr. Price: It performs some acts of the legislative?

Mayor Fleischman: Yes.

Mr. Price: That is what I mean. For instance, if they wanted to create an office in some department, it would require the whole board to create it, while one of them might administer—

Mayor Fleischman: At the head of his department. One man designated by the board itself, not by anyone else, but by the board itself, to have charge of some certain public institution, another member to have charge of the street cleaning department and repairing. Let each member of the board be designated by the board itself to take charge of a certain department.

Mr. Price: You are not an attorney by profession?

Mayor Fleischman: No.

Mr. Price: Then I won't ask you any legal questions.

Mr. Williams: I would like to have the mayor give the committee his idea as to the board governing the fire and police departments?

Mayor Fleischman: Well, in my experience, I believe that our police department, as it is to-day, under a commission appointed by the governor, is as good as it can be, and I do not believe that it should be changed. My reasons therefor are very plain ones: All police departments should be kept free from any political influence. The danger which arises, the mayor appointing the board of public safety, which takes the place of the police commission as it stands to-day, is, that the board of public safety practically passes upon the acts of the mayor, insomuch as that board confirms or disapproves of his acts. It makes it possible for the police department to get into politics. The board passes upon the appointments or acts of the mayor who has named them. I do not believe that you will find a board of men whom the mayor might appoint who would be very likely to disapprove of any acts for which the mayor might be responsible. I do not believe that a mayor who would send the name of an officer, for instance, to the board of public safety for

confirmation, would be likely to have his act disapproved; I do not believe the board would be likely to disapprove it, because they are created by the mayor themselves. As it stands to-day, we have a safeguard. The police commission is appointed by the Governor, and they are a check upon the mayor, and the mayor is also a check upon them. The same thing, practically, applies to the fire commissioners; if the board of public safety were to take their place, the same remarks would apply. As it stands to-day the mayor has absolutely nothing to do with the appointment of the fire department; the commissioners appoint their own foremen.

Mr. Guerin: I would like to ask the mayor a question: I would like to ask you, Mayor Fleischman, what, in your opinion should constitute the duties of a mayor of a city in a general way?

Mayor Fleischman: Well, the mayor should be, to my mind, the responsible head of the city government.

Mr. Guerin: And the only way he can be made the responsible head, is to put him in such a position that if a board, or the head of a department is unfaithful in the discharge of his duties, that he may remove him?

Mayor Fleischman: That he may have the power of removal, yes.

Mr. Guerin: I want to ask you whether or not, in your experience as mayor, you have not found that it is better to leave the executive management and control of men in the police and fire departments to the chiefs of those departments, rather than to the board, or head of any department?

Mayor Fleischman: The control and management have been practically in the hands of the police and fire departments, in my experience.

Mayor Fleischman: The mayor has control of the police department of Cincinnati, under rules prescribed by the police commissioners.

Mr. Guerin: I want to ask Mr. Fleischman if, in his opinion, an impartial civil service can be maintained in any other manner than by a bi-partisan board, appointed by some power other than the municipal power?

Mayor Fleischman: I am afraid not. It would depend upon the men, of course, that you got into office, but there is always a chance of politics being brought into the police and fire departments, if the appointment is made by the executive of the city.

Mr. Guerin: I will ask you whether or not you do not think it is a good thing, in city government, to have these heads of departments

meet with the mayor occasionally, and to keep him thoroughly informed as to the condition of affairs in the city, and then to make it his duty to report to council such recommendations for the welfare of the city as he may deem fit and proper?

Mayor Fleischman: The mayor does that to-day. He makes the recommendations, independently, of course; but the plan to have him meet with the heads of the departments appears to me a good one.

Mr. Guerin: In this same connection I wanted to ask you—I do not know what your form of government is in Cincinnati—but if there should not be a provision providing that the board or the heads of departments in the various branches of city government should, once a year, make up and deliver to the mayor an estimate of the expenditures for the maintenance of their department for the next year, give that to the mayor and let him make a budget, and once a year, or oftener if required, present that to the city council, but all the time making him responsible for the expenditures recommended to council?

Mayor Fleischman: That would all come under the head of making the mayor the responsible head of the city government.

Mr. Guerin: May I ask how long you have been mayor of Cincinnati?

Mayor Fleischman: Two years and a half.

Mr. Cole: That board of public affairs in Cincinnati—the board of public service in Cincinnati—is that the proper designation?

Mayor Fleischman: Yes.

Mr. Cole: That board is elected?

Mayor Fleischman: Yes.

Mr. Cole: Has that board been performing acceptable service?

Mayor Fleischman: The service has been acceptable, in so far as it has gone, but the trouble under the new code is, that the board will be reduced in numbers, while it has increased responsibilities.

Mr. Cole: If three men cannot perform that service, how do you expect one man to do it?

Mayor Fleischman: I do not expect one man to do it.

Mr. Cole: Your contention is, that the mayor should be the responsible head of the city government, and appoint directors to superintend the different departments?

Mayor Fleischman: No, that is not my proposition.

Mr. Cole: Your proposition is, that the mayor shall appoint boards, and not the directors?

Mayor Fleischman: Yes.

Mr. Cole: Don't you think it just as well to make these boards responsible to the people as to make them responsible to the mayor?

Mayor Fleischman: I do not.

Mr. Cole: Don't you think the state government works pretty satisfactorily,—to make the head of a state department an elective officer? You would not advise making the Governor the responsible head and have him appoint the heads of departments?

Mayor Fleischman: The scope is too large.

Mr. Cole: The governor appoints the heads of institutions, but not the heads of executive departments, and the only scandals that have ever arisen have been under the power of the governor to appoint these boards in the state government. The elective power has seldom been betrayed in the state of Ohio, but the appointive power oft has been; and I think it would be a great gain to the state, to the cities of the state of Ohio, if more officers were elective instead of appointive.

Mayor Fleischman: Then under your plan you would make the clerk of the corporation, or the auditor, as you call him, an elective officer

Mr. Cole: I don't mean the appointment of the auditor, nor of the treasurer, nor of the other officers contemplated under the Code. I mean the appointment of this Board of Public Service,—that is the only board I refer to.

Mr. Price: All of whose duties really would centre in the mayor, as executive officer?

Mayor Fleischman: The administrative board of the city is what I consider the Board of Public Service, and it would pass upon the work of the mayor or other department.

Mr. Price: I want to draw out the fact that the Auditor of State is an accountant, the same as the clerk, and the treasurer is the custodian of the funds.

Mayor Fleischman: We have an auditor in the city.

Mr. Price: Who is elected?

Mayor Fleischman: And who is to be elected, under the contemplated bill.

Mr. Price: The bill provides that an attorney for the city shall be appointed, and the attorney-general is elected in the state?

Mayor Fleischman: Yes.

Mr. Brumbaugh: Do you consider it best that a solicitor should be appointed by the mayor?

Mayor Fleischman: I don't know, as the bill stands, whether it makes any change; if, however, the mayor has more authority and is given more power to make it, it would be his duty to appoint his own solicitor.

Mr. Brumbaugh: Shouldn't the solicitor be answerable to the people, rather than to the mayor? In case of the appointment of a solicitor by the mayor, or in machine politics, the man appointed might be the creature of the machine, or a man under obligations to the mayor, and also, in a contest, in the matter of a contest between the mayor and council, you can easily see how, if the mayor appointed the solicitor, all the way through, there would be danger.

Mayor Fleischman: I really believe it is immaterial, as far as good government is concerned, outside of the point raised by you; it is something I had not thought of before.

Mr. Brumbaugh: I have been reading the parts of the Code relating to the duties of the solicitor, and it seems to me that if he is an attorney who is to impartially advise, it would be necessary to have him answerable to the people rather than to the mayor. Take that one single case of the mayor —

Mayor Fleischman: I say, outside of that one point, I don't know as it makes any difference. It may be just as well for him to be elected.

Mr. Brumbaugh: In a case where a mayor and council held adverse views, or in any contest, or deadlock, between council and mayor,—the solicitor would not be in a position to give a fair and impartial opinion in regard to the question, being the creature of the mayor.

Mayor Fleischman: That view may be a correct one, as to that.

Mr. Silberberg: On page 36 of the Code bill, line 912, it reads: "Council shall, by ordinance, determine the number of clerks and employes in the office of the mayor, and shall fix their duties, bonds and compensation. Such clerks and employes shall be appointed by the mayor, and shall serve during the term of the mayor, unless sooner removed by him for cause, which shall be stated to council."

Now, Mr. Fleischman, will you please tell me who shall pass upon the sufficiency of the cause?

Mayor Fleischman: I judge by this, the mayor. I have that marked, Mr. Silberberg, and I judge the words, "Which shall be stated to council," should be taken out, eliminated.

Mr. Denman: Mr. Mayor, will you please explain the duties of the board of public service in Cincinnati?

Mayor Fleischman: As it stands to-day?

Mr. Denman: Yes.

Mayor Fleischman: It is the administrative board of the city.

Judge Thomas: Has council anything to say as to what streets shall be improved?

Mayor Fleischman: Yes; that is by resolution of council. by ordinance, and the board of public service declares it necessary.

Judge Thomas: And recommends to council?

Mayor Fleischman: Yes.

Judge Thomas: They have power to make contracts for the improvement of streets?

Mayor Fleischman: Under the same requirements, the same regulations.

Judge Thomas: Can they make any contracts until authorized by Council?

Mayor Fleischman: No, no. But as they are constituted to-day, they also act as a legislative body; they act upon franchises, in conjunction with council; the franchise is first passed by council, then through the board of public service, then passed upon by the mayor.

Mr. Price: What do you think of that provision, Mr. Mayor, for making the franchises?

Mayor Fleischman: I think as contemplated under the new Code, it is very safe, as between council and the mayor; I do not think the intervention of a third body is at all necessary.

Mr. Williams: I would like to ask you if it was not your intention that the members of that administrative board alone should be appointed by the mayor, and that the heads of the executive departments, such as the auditor, should be elected?

Mayor Fleischman: Absolutely.

Mr. Stage: I want to ask a question,—it may seem frivolous, but I ask it seriously. Do you think the executive department of a city would be strengthened by having a board of three, a mayoralty board of three or five, rather than one mayor of a city?

Mayor Fleischman: I think so, because one man could not do the work.

Mr. Stage: Then you think they ought to have a board of mayors?

Mayor Fleischman: Not a board of mayors; in any corporation, usually they have a president and a board of directors. A city is a corporation and should be conducted as a corporation.

Mr. Stage: Do you think it would strengthen it to have more than one?

Mr. Denman: I would like to have the mayor say what objection he would see to have one man occupy the position of the board, with authority to hire the necessary help to supervise the work under each department? Say that you had, instead of the board of public service, one man as a director, giving him all the power to hire the necessary help to supervise, and the necessary clerks and laborers, etc., to perform the work under their charge?

Mayor Fleischman: I believe one man could do the work,—the proper man.

Mr. Denman: Well, what advantages are there then, in having more than one, or what disadvantages, or what dangers?

Mayor Fleischman: In having more than one?

Mr. Denman: No; one man?

Mayor Fleischman: The old danger of a man building up a machine around himself.

Mr. Painter: I would ask you, Mr. Mayor, if it is not your idea that the board of public service, in a city such as Cincinnati, composed of five members, would be more capable of handling that tremendous business, than would one man?

Mayor Fleischman: If the one man were permitted enough help, and to expend enough money to insure the proper kind of help, and to get the proper kind of people, so that he could do the work; but it is very doubtful whether one man could select proper assistants in the work, while you could elect or appoint five men as heads of departments to a great deal better advantage.

Mr. Price: In the practical operation of your board down there, as I understand you, there are five members; one of them is appointed to look after certain departments, or certain things; another is assigned to another department, a third to another department, and so with the fourth and fifth members; that is, the executive work of your municipal corporation, as to the board, is divided by itself, so that one man pays particular attention to a particular thing?

Mayor Fleischman: And all act as a committee of the whole.

Mr. Price: And while that is the case, yet they act also on a great many things, in determining what shall be done in their departments?

Mayor Fleischman: They determine the general policy and the policy of each department; the city is divided into districts, and each man

has charge of his own district; but still, the whole board has supervision of all the districts of any individual.

Mr. Price: Then there can't be very much difference between that and having a department, such as a director of accounts, director of law, and of public safety, and having them to constitute a board that should have general supervision of the whole affairs of the city?

Mayor Fleischman: The only difference is that this board does not include any director of public safety; this board is merely the board of public works, entirely independent of any other board or part of the government of the city,—there is where that difference is; this board has only charge of the public works of the city.

Mr. Price: But in their practical operation as to their work, they work practically as directors of a certain department.

Mayor Fleischman: Only of the public works of the city, the streets and parks and public institutions.

Judge Thomas: Just one other question: Should the members of the board of public service be elected all at one time, or one at a time, to serve for three or five years?

Mayor Fleischman: My suggestion is, that they should not be elected at all.

Judge Thomas: If they are elected?

Mayor Fleischman: All at one time.

Mr. Metzger: Do I understand you to say that this Board of Public Affairs in the city of Cincinnati has legislative power?

Mayor Fleischman: Yes.

Mr. Metzger: Do you think there ought to be entire separation of the legislative and executive power?

Mayor Fleischman: Yes.

Mr. Metzger: Then this board ought not to have the legislative power?

Mayor Fleischman: I think not.

Mr. Silberberg: I want to get your opinion on the following, on page 51, line 1288, clerk of the police court. "In every city there shall be a clerk of the police court, who shall be elected for a term of three years and shall serve until his successor is elected and qualified." In your opinion, would it be better for this officer to be elected or appointed by the mayor?

Mayor Fleischman: Absolutely it makes no difference in his case; his duties are such that he can just as well be elected as appointed, or appointed as elected.

Mr. Metzger: Isn't it better to have him appointed by the police court, anyhow?

Mayor Fleischman: He has charge of the police department; it might not be a bad plan.

Mr. Worthington: What are your reasons for saying that the members of the board should be all elected at one time?

• Mayor Fleischman: I think if the Board is going to be elected, they should all go in together and come out together.

Mr. Worthington: Don't you think a man with experience, or one or two men with experience in the board, would not be better than all new members going in?

Mayor Fleischman: I don't think it would add a great deal.

Mr. Worthington: In speaking of a board of four men, why wouldn't it do to have just one man as head of a department, and divide the city into districts, and appoint, say three to five superintendents, and hold these superintendents responsible, they to be removed at any time for cause?

Mayor Fleischman: I think that matter was taken up a moment ago. The question is upon the kind of men he would appoint—if he could get the proper kind of men. There are superintendents under the board, superintendents of waterworks, of street cleaning and repairing, but these five men have charge of the different departments.

Mr. Worthington: In the actual business a man carries on, I believe they generally have one head.

Mayor Fleischman: If you divide it under different heads, the lower down you get, the more you have; if you have different departments in your business you have a head for each department.

Mr. Worthington: Yes, but each held responsible to one man.

Mayor Fleischman: That is the point I am making—they should be held responsible to the chief executive of the city, he to appoint the five managers for the five different departments of the city, under the Board of Public Works, and these five men to constitute, let us say, a Board of Directors, they to appoint their different superintendents, or heads of departments, as a Board.

Mr. Silberberg: The idea is, to have them appointed in that way, that any time they didn't give satisfaction to the people or attend to

the business right, they could be removed at once—I think that would give a better result.

Mr. Price: Mr. Mayor, suppose that the council would give authority to create by ordinance, or provide by ordinance, for a Board of Public Service, consisting of not more than five members, nor fewer than three, with the appointive power in the mayor, letting the mayoralty determine the size of that Board—within limits, of course?

Mayor Fleischman: That plan would be a very good one, if it could be accomplished. I had the idea that that could not be done.

Mr. Price: I did not ask you a constitutional question. I think it can be done; I will say, as a lawyer, I think it can; but I did not ask the constitutional question.

Mayor Fleischman: I think if the plan could be carried out, it would be a most excellent one.

Mr. Price: Well, I will say as to that, that there are decisions I have found that show it can be done.

Mayor Fleischman: I want to say that everything I have said is only from the Cincinnati standpoint; the bill as it stands to-day may be a most excellent one.

Mr. Price: The only objection I have to the bill is that it is not quite flexible enough, in the matter of villages—

Mayor Fleischman: Some say it is not flexible enough for the larger cities.

Mr. Denman: This bill contemplates that all officers shall go in at the same time, remain three years and go out; do you think that is good policy?

Mayor Fleischman: We have not found it worked any hardship; it has been practically the same way in Cincinnati, under the last administration.

Mr. Denman: Does your board go in all at the same time, and all go out at the same time?

Mayor Fleischman: Yes.

Mr. Denman: This bill provides that all officers, councilmen and the executive officers shall all be elected for three years, at the same time,—they shall be elected at the same time, serve for three years, or until their successors are elected or qualified. Wouldn't it be better, in your opinion, if one-third of the councilmen should be elected each year, and in that way, keep two-thirds of the councilmen of experience, instead of having the possibility of an entire body of new men?

Mayor Fleischman: Well, the great objection to that is, that it would necessitate an election every year.

Mr. Metzger: Your contention is, that this Board of Public Service ought to be an appointive board?

Mayor Fleischman: Yes.

Mr. Metzger: Then there is practically no difference between your theory and the Federal plan, only that in one instance the mayor subdivides the work, and in the other instance, the board does it? In one instance the mayor names the heads of departments, and in the other case, the board does that?

Mayor Fleischman: The only difference is this: This Board of Public Service is purely and simply an administrative Board of Public Works; it has nothing to do with the Police Department, while as I understand, under the Federal plan, each member of the board, or each director is at the head of a different department.

Mr. Devaul: I would like to ask one question. I understand the mayor to say that if these parties went in at different times so that there would be two-thirds of the body experienced men in office, it would necessitate an election every year?

Mayor Fleischman: Yes.

Mr. Devaul: Wouldn't that matter be obviated by having the first election for one, two or three years, and after the expiration of those terms, then the election could be held for three years, as now provided in the bill?

Mayor Fleischman: If you only elect for one year, you would have to have an election the first year.

Mr. Denman: It would be possible, would it not, Mr. Mayor, for the administration that would go in next year to institute some policy which would be very bad, and the people would then have no means of expressing any disapproval until three years have elapsed? It might not be such a plan as could be gotten at legally?

Mayor Fleischman: You refer only to the Board of Legislation of the council, if all the council go in at the same time?

Mr. Denman: No, I refer to the entire force of officials. If they institute some policy, we will say, during the first year, that is not agreeable to the people, would they not have a better opportunity to express their disapproval if an election were held the next year, to fill the places of those whose terms expired at that time?

Mayor Fleischman: They might, yes. There is one more suggestion that I want to make, that is the placing of the Department of Health under the Department of Safety, and taking it away from the Board of Public Service. I would suggest that under the bill, the Board of Public Service has the Department of Health in its charge; I think that would be better in the hands of the Board of Public Safety. They have the sanitary police under them, and the sanitary police would be better if they were under the civil service. The Board of Public Safety really ought to look after the health of the city.

Mr. Silberberg: I have a note made here that on page 42, line 1070, section 95, I think that whole section should go under the Board of Public Safety, instead of the Board of Public Service.

Mayor Fleischman: I think that is just what I suggested, Mr. Silberberg.

Mr. Silberberg: While you suggested that, you will find in line 1081, where it says,—“Said board shall have power to require physicians, midwives, clergymen, undertakers and sextons to keep a registry of all births, marriages and deaths in which their professional services have been required, together with such facts concerning the same as the board may desire, and such registry shall be made a part of the record of said board.” Wouldn't it be proper to insert there after the word “sexton” “And all other persons who may officiate in like capacity.” There are any amount of congregations which have no sexton and this clause is lame in that respect.

Mayor Fleischman: That is all right, I should think.

The Chairman: I am sure the committee is under great obligations to Mayor Fleischman for appearing and discussing this matter so fully for us.

Mayor Jones, of Wellston, is present, and I know we shall be glad to hear from him. Mayor Jones.

Mayor Jones: Mr. Chairman and Gentlemen—Our city is one that at the last Federal census showed a population of 8,045. The Code makes quite a change in regard to cities. What I want to suggest is, that cities under 20,000 ought not to have the police judge. For instance, our city pays a salary for the marshal and mayor of \$700, and in this instance, an added police court, and a prosecutor also, would run it up probably to \$3,500, under the salary plan. To give an illustration: Last night I was talking with one of the constables here with regard to his view of the salary plan. He said he collected for himself, under the fee system,

\$50 costs, and for the justice of the peace, \$4. Just to show you the difference it makes when a man is under the fee system or the salary system.

A member: What was that?

Mayor Jones: I will repeat it. To give an illustration of the difference between the salary and fee plan, and as to where the line ought to be drawn. I think that up to 20,000, the mayor should act as police judge; after that it should be under the fee system, and to illustrate this,—in speaking to one of the constables here last night, he told me that he collected for himself \$50 in fees, and \$4 for the justice of the peace who was on a salary. That shows the difference in making collections. I believe that all cities of 20,000 and under ought to be presided over by a mayor, who acts as police judge.

The bill also provides in cities for a police clerk; I think that should be combined with the city clerk, as well, because to employ a separate police clerk would be burdensome. With regard to the appointment of a city solicitor: I believe that the people would fare better if the solicitor should be elected by the people, because it means a great deal to the city,—his advice to council, and there is where his particular duties will lie. A mayor for a small city, or a large one, would probably appoint a man for solicitor that would lean toward him, toward what the mayor might suggest or desire, whereas, if he were elected by the people, he would be independent of that. His duties to the mayor are minor, as between the city and the mayor.

In particular, the suggestion I had to make, is the difference that ought to be drawn between the cities as to where there ought to be a police judge; as I say, I think the mayor ought to act as police judge in cities under 20,000,—up to 20,000, because it will mean a great deal to that city. In our city it would cost in the neighborhood of \$3,500 or \$4,000, where now in the neighborhood of \$700 is paid, under a salary, that much more.

Mr. Comings: You think the fee system ought not to be abolished in the smaller cities?

Mayor Jones: No. If the change is made, that in all cities under 20,000 that the mayor should preside and act as police judge.

Mr. Comings: And the fees collected and retained by him?

Mayor Jones: Yes.

Mr. Comings: You think that if the fees were left to be collected by the city, they would not be so well collected?

Mayor Jones: The constable told me about the fee system; he says, "I collected for myself \$52.00, and for the justice of the peace \$4.00."

Mr. Comings: That was after the change had been made from the fee system to the salary system?

Mayor Jones: Yes; this was in Columbus; it would, of course, work everywhere just the same.

Mr. Metzger: How large is your city?

Mayor Jones: 8,045 at the last census.

Mr. Metzger: What does it cost to operate your city now?

Mayor Jones: The mayor gets \$300 per year, and the marshal gets \$400 in fees.

Mr. Metzger: Have you no other paid official in the city?

Mayor Jones: Yes; the clerk receives \$20 a month and the solicitor receives \$60 a year.

Mr. Metzger: Under this proposed plan, what do you estimate the cost to your city would be?

Mayor Jones: In the neighborhood of \$3,500 or \$4,000.

Mr. Metzger: Where does that come in?

Mayor Jones: By reason of the salary of the mayor and marshal, also of the police clerk, the city solicitor and the police judge.

Mr. Metzger: Of course, the addition amount that would be paid these people in salaries would be received back — that is, would be reduced by the fees, and would go into the city treasury?

Mayor Jones: Yes, but the collections would be different.

Mr. Metzger: You contend that the collections would not be so large, that is, if they had no interest in the fees, and that they would not be so diligent? And you are satisfied, in your own mind, that this system as proposed in the Code here, would be very much more expensive than the system now in effect?

Mayor Jones: Far more.

Mr. Painter: What, in your opinion, should be the dividing line between cities and villages?

Mayor Jones: Well, I don't know as I have studied much with regard to that, probably 10,000. I believe that would give us a better government; but, on the other hand, I don't believe that there ought to be a police judge in any city with less than 20,000, because the mayor would have very little to do then.

Judge Thomas: Does your city desire to be a village?

Mayor Jones: They haven't made any expression with regard to that.

Judge Thomas: Do you think a village government, a village form of government would be better for towns the size of yours?

Mayor Jones: I believe it would—far better.

Mr. Price: Because of less expense in running it?

Mayor Jones: Yes.

Mr. Silberberg: What is the name of your city?

Mayor Jones: Wellston.

Mr. Silberberg: Have you any wholesale houses there?

Mayor Jones: No, I don't know that we have.

Mr. Silberberg: Would your merchants be satisfied to be called a village, or would any of your citizens desire to be called a village, instead of a city?

Mayor Jones: Well, that is a question of interest to their welfare.

Mr. Silberberg: We want to see how the people over the state feel about it—there are any amount of the cities which have a population of between five and ten thousand, and there are merchants who would not want to live there because it would be called a village. You will find any amount of cities with a population of five or six or seven thousand, with wholesale merchants who send out their representatives throughout the state, and if your representatives comes in and presents his card to the man he wants to sell goods to, the man will say, "You are from such a village, a small village; we don't think you are able to sell your goods cheap and get transportation, etc., from a small village." Now, what would be your opinion—would you rather be called a city or a village?

Mayor Jones: As far as the name is concerned, we would prefer to be called a city.

Mr. Silberberg: Oh, well then, if you have the name, you have got to have the game.

Mr. Comings: Does your city solicitor receive no other pay?

Mayor Jones: Yes, he does for drawing ordinances, and other work, special work of that kind.

Mr. Comings: You regard the \$60 a year simply as a retaining fee?

Mayor Jones: Yes.

The Chairman: The mayor of one of the Hamilton county villages is present and will address us, the Mayor of Hyde Park.

Mayor Osler: Gentlemen—I am here just to express a few views as to villages, and I take it that villages in a county like Hamilton, which are suburban to a large city, feel more interest in a new code than villages in the outlying counties, or adjacent thereto. However, the villages, in number, far exceed the cities. I have made a short examination of the Code, so far as it pertains to villages. I have had the honor to be mayor of our village of Hyde Park for the past two years, and there are some things, some features of this Code, that are entirely too heavy and cumbersome for a village to handle. A village, as you all know, is composed of people where everybody knows everybody else. Our councilmen are property owners and have resided in our village for years, many of them, and are identified with almost every interest of the village. We meet and talk over the nominees for any office; partisan lines are seldom drawn; we try to have the best people we can get, regardless of politics or partisan lines—in my experience, there is none; the citizens simply get together and make up a ticket composed of both parties.

There are a few sections I have marked, pertaining to villages. The first is on page 52 of the code, section 117, in regard to councils. "Councils of villages shall be governed by the provisions, so far as applicable, of sections 75, 76, 77, 78, 80 and 81 of this act, and wherever in said section the word "city" appears, the word "village" shall be substituted for this purpose." Now, to get any idea of that, we have to turn to these sections referred to, found on pages 34 and 35. Section 78, at the top of page 34, the last few lines, commencing with the beginning of the sentence, "No ordinance or resolution granting a franchise or creating a right, or involving the expenditure of money, or the levying of any tax, or for the purchase, lease, sale or transfer of property, shall be passed unless the same shall have been read on three different days, and with respect to any such ordinance or resolution, there shall be no authority to dispense with this rule." Of course, in a council of six members, the majority must be four. Now, this is a thing that would almost stop village government. In most villages, the council only meets once a month, or perhaps twice a month, and then if there is anything special to be done, they have an adjourned meeting. As I say, everybody is at home in a village, the councilmen live there and all their interests are there; they are all interested in the expenditures and are liable for any debts they create or any obligations they incur. I don't believe in a village you could get the councilmen to consent to three meet-

ings a month, and even if we could get them, if we would send out and pull them in by the neck, we would have to do that on three separate days, for the ordinance would have to be read three times on three separate days. It would force villages to the point where they wouldn't have council meetings, except on three consecutive days, or nights, and they would meet there night after night to read over an ordinance that is absolutely of no interest and no public importance, and if they fail to get a quorum then everything would have to go over for another month. It may be all right, as far as cities are concerned, but for a village to be compelled to read every little ordinance, or any ordinance, three times, and taking away the power to suspend the rules, will work quite a hardship, and it will almost block legislation pertaining to villages.

Now, the other section which is made applicable also, is section 80, the latter part, "All ordinances and resolutions requiring publication shall be published in a newspaper printed in the German language, if there be such paper published and circulated in the municipality." We have been doing a great deal of improving in Hyde Park, and like all the villages suburban or adjacent to a large city, we take great pride, and aim to make it a beautiful residence place, so as to attract people from the city; we are more interested in this, probably, than outlying villages, or villages in other counties, where they have no large cities. We have thirty-two villages in Hamilton county, outlying Cincinnati, and if that section would become operative, there is no reason why some shrewd newspaper man—and there are lots of them—should not publish a little newspaper in German in every village. He will put thirty-two different names to the sheet, the Hyde Parks News, the Norwood News, the Clifton News, etc., and enter it at the different postoffices, and as it has been decided that where a newspaper is registered in the postoffice, that is where it is published, he could do this. Very few of us can read German. I cannot; but all of us can read English. He would take that German newspaper, under the different names, into each of the villages, and every ordinance and resolution of every village would have to be published in his paper at full rates. The cost of our ordinances, as now arranged, at half rates, costs us some \$600 or \$700, whereas, at full legal rates, it would be \$1400, and if we had the German newspaper, it would cost us about \$2800, where now it costs us only about \$700. So you see how that would work, and therefore, I think that section should be cut out, and I also think the right to suspend the rules should be given to village councils, for the reasons I have already given to you.

Now, the next section is 81, which is also made applicable to villages: "The mayor, if he approve the same, shall sign it, and return it forthwith to council; but if he do not approve it, he shall within ten days after its passage or adoption, return the same with his objections to council, or, if council is not in session, return it to the next regular meeting thereof, which objections council shall cause to be entered upon its journal; provided, that the mayor may approve or disapprove the whole or any item of an ordinance appropriating money. If he do not return such ordinance or resolution within the time limited in this section, it shall take effect in the same manner as if he had signed it, unless council by adjournment prevent its return. When the mayor disapproves an ordinance or resolution, or any part thereof, and returns it to council with his objections, council may, after ten days, reconsider the same, and if such ordinance, resolution, or item, upon such reconsideration, is approved by the votes of two-thirds of all the members elected to council, it shall then take effect as if signed by the mayor."

In other words, it gives the veto power to the mayor. That is all right in cities, but I don't think it is the thing for villages, and I think most villages will agree with me in that. Section 78 says that no ordinance shall be passed without the concurrence of all members of the council—of a majority of all the members, I meant to say; that is, in a council of six, the majority would be four. Now, suppose an ordinance of Hyde Park council, for example, is vetoed by the mayor, after having been passed by a majority—four—of the councilmen. Why, the same four will vote for it any time. After the mayor vetoes it and it is returned to council with his objections, council can again pass it by the same number of votes, over his veto, as it was passed by in the first instance, and in this regard, the veto power is a nullity; but it does give the mayor power to hold up all legislation for a month or two, if he chooses.

Now, in our county, everything is not always harmonious. I could name two—and anyone acquainted with the situation will recognize the ones I mean—but I would rather not be quoted, though as I say, I could name two villages where the mayor and council are on the outs; so much so, that when they come to council meetings each fellow comes with a gun ready for the other fellow. Now, what would be the effect of that section in this place? It would simply mean that the mayor could hold everything up, pay-rolls, ordinances for improvement, and everything else; so that I would suggest this: If you are going to give

the mayor of a village the veto power, make it worth something. If I have the right to pass upon legislation by council, give me the right so that if I do veto a bill that it will take all six of the votes to pass it over my veto. As it is now, the four men who passed it first, can pass it again over the veto. So much as to those sections which are made applicable to villages; I think those I have mentioned should be absolutely cut out.

The next matter I desire to call attention to, is the village solicitor, referred to on page 55, section 123. We have politics in villages, the hottest kind; there is no place on earth where you can have such feeling in politics as in a village. This section provides that the solicitor shall be appointed by the mayor. I don't know whether any of you gentlemen have ever officiated as mayor of a village, but I tell you, they have troubles of their own, without having to appoint the solicitor, too, and be responsible for his sins, either of omission or commission. I am unquestionably in favor of the solicitor being elected by the people. In our village we have about six young, ambitious lawyers, outside of myself—of course, I am fixed. Now, under this one of these young gentlemen will come to me and say, "Ousler, you are going to run for mayor next year, under the new code. Will you appoint me for solicitor?" Pardon me for using my own village, but I have to illustrate. I will say to him, "Oh, well, you know we don't like to promise before election," but you gentlemen all know how that is. Then another young lawyer comes to me, and another and another and the next and the next fellow, too. And I put them off as best I can, and temporize, but finally they get persistent, and they say, "If you don't appoint me"—they all have their friends, you know, and they say—"we will tout somebody else. Smith or Brown or Jones, for mayor." Well, then, I am compelled to take sides, for self-protection. That is the way it will work out, and when I do, I will naturally have to try to pick out the strongest man, the man who will be of most strength to me—we all want to win—so it will divide the thing into a neighborhood fight, brother against brother, father against father and neighbor against neighbor. Take it in the other districts, outside of our villages—I am more familiar with my own home county of Muskingum; I know of, I think, at least six or eight incorporated villages in Muskingum and Guernsey, that have no lawyers resident in the village. You all know that outside of the larger cities the lawyers all reside in the county seats, where the courts are held. If there is anything needed in the village in the way of legal services it

employs an attorney specially and pays him for his work, and when that is over that is all there is to it. The very simplicity of the method commends itself. But this section provides we must have a solicitor. There will be at least 80 per cent. of the villages that have no attorney residing within their limits; but I would make this suggestion, where they do reside: That the solicitor should be elected, and in case no election is had—that is, where no attorney is residing in the village—that the council shall have power to employ such legal advice as they may deem necessary, from time to time; that will relieve everything.

Mr. Denman: I would like to ask the mayor if he does not think that would be best in all cases?

Mayor Ousler: Now, don't drag me into the "city" controversy.

Mr. Denman: I mean with reference to villages alone?

Mayor Ousler: Yes, I think so; I think the old statute is good, if they don't want to establish the office, leave it alone.

Mr. Cole: As I understand it now, under the present statute or law, you can either fill that office, or leave it vacant?

Mayor Ousler: Yes.

Mr. Cole: I know in my own village, we have three or four lawyers who did not want to make the fight, and it was left vacant.

Mayor Ousler: The next thing is on page 55, the street commissioner. "The street commissioner shall be appointed by the mayor for a term of three years and shall serve until his successor is appointed and qualified. He shall be an elector of the corporation, and a resident thereof for at least five years next preceding his appointment. * * *

The street commissioner, under the direction of council, shall supervise the improvement and repair of streets, alleys, avenues, lands, lanes, squares, wharves, landings, market-houses, bridges, viaducts, sidewalks, sewers, drains, etc., etc., * * * and shall perform such other duties consistent with the nature of his office, as council may require, and shall have such assistants as council may provide, who shall be appointed by the street commissioner, and shall serve for such time and at such compensation as may be fixed by council."—Now, the old law of street commissioner's was all right, in my opinion. We have twenty-six miles of improved highway—road-way,—in our village, with thirty-two miles of cement sidewalks; we have eight miles of eighty foot avenues. We have a marshal who acts as street commissioner, under the * * *

His duty is to see that the streets are kept clean, to see that the surface is kept in shape, and to look after repairs, especially in spring, after the

winter weather. We keep material on hand for this purpose. This bill provides that the commissioner shall also be an engineer,—“And shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wharves, landings, market-houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship-channels, streams and water-courses.” Very few villages have an engineer, and I think that section should be the same as the old one. Street commissioners should simply have power to care for—should simply have the care of the streets after they are built, and council should have the power to employ engineers, just the same as we have now.

Mr. Silberberg: Wouldn't this provision cure it: “Council may require and shall have such assistants as council may direct?”

Mayor Osler: You might get around it by that; but the trouble is there: the commissioner himself has the power to appoint; the council of the village is going to pay, although they have no say as to who shall be that engineer. My theory is this: That in any little village, the council is the thing, and all contracts and expenditures should go to them, and no power should be given to any one man to incur debts by appointing engineers or other assistants, except by council. It is safer, in villages; we all know the councilmen and the councilmen all know everybody, and know that they are held responsible. This puts useless power in one man's hands, as far as villages are concerned.

There is another very serious thing to which I desire to call attention, on page 19, section 40, with reference to appropriations: “On or before the first Monday in March of each year the several officers, boards and departments in every municipal corporation, shall report an estimate to the auditor or clerk of the corporation, stating the amount of money needed for their respective wants for the incoming year and for each month thereof.”

Now on the next page, no, page 21, Section 46: “In all municipal corporations council shall make, at the beginning of each fiscal half year, appropriations for each of the several objects for which the corporation has to provide, apportioned to each month, out of the moneys known to be in the treasury, or estimated to come into it during the six months next ensuing from the collection of taxes and all other sources of revenue. All expenditures within the following six months shall be made with and within said appropriation and balances thereof, or credits remaining over at the end of the year, shall then no longer be open for payment therefrom, and shall be recredited to the funds from

which they were taken." In other words, in a little village, like ours, we make a little levy each year in the village; the county auditor gives us a sheet, and it enumerates all the levies which can be made in the village. As members of council, we all get together and every fellow figures it up, about what we need, as economically as he can, because we are all helping to pay the taxes. We figure for light and police regulations and all those things. Now, then, say we put on a quarter of a mill for street repair, it will figure us about \$600 in a year; that is already appropriated, and the levy we make for street repairs cannot be used for any other purpose. Now, then, along comes this section and says, "You have to take that \$600 and divide it into months, and you cannot use the amount except as it is designated, for each month." For instance, during the summer, we have a low expenditure, only for sprinkling; but during the spring we have repairs, because during the winter the heavy rains wash out the surface of the streets, wash holes in them, and in the asphalt; so in May we may spend \$300, which will put all our streets in nice shape for the summer, for driving and for other use; that is the way it is now. But if we would have to make an appropriation for each month, you can see how it would work, we could only use the amount of the appropriation for each particular month. I think villages should be eliminated from that regulation. I can see how it may be all right with cities to have things done this way, but with villages it is absolutely useless. So these sections should be amended as to villages.

There is another peculiarity: We make improvements in villages, build streets and sidewalks. Now, I would like to call your attention to page 23, as to assessments. I will not read that section, section 48, which provides that we can assess 25 per cent. of the tax value for the improvement of streets, and it seems to imply that we can sell bonds in anticipation of assessments, giving the property-owner ten years to pay it in, but there is nothing in that section, there is nothing in this whole bill directly that gives us any right to fix the time, only by implication; we cannot sell bonds payable in ten years, in that section; by implication, we might make it a hundred years; it does not provide whether we are to issue bonds running from one to ten years, or one to fifteen, or to twenty. It also allows for 25 per cent. of the tax value; that ought to be made higher; we could spend 30 per cent. of the tax value for improvement, if it is cut up into ten years, but the way it stands, the great objection is this: Suppose six of these gentlemen live

on one street, or all had property on one street, on the same street; two of these own houses, the other four lots are vacant; you know vacant property will run from \$100 to \$200 a lot down as low as \$50; 25 per cent. of \$50 would be \$12.50 for the vacant lot; but take that man's neighbor who has improved the street, who helps to make the town a desirable one for residence purposes, because vacant lots and fields don't make a village. The man who does the most to make that property valuable by building a nice house for a residence has to pay 25 per cent. on the whole property. and if necessary, we can hold him to it. Now, I think that ought to be modified; if they are going to make that 25 per cent. it ought to be on an equality, 25 per cent. of the land, exclusive of the improvements.

Mr. Price: What do you think of an optional provision providing that council may proceed to assess abutting feet front?

Mayor Osler: I like that method.

Mr. Price: Leaving it to council which one of two or three or four methods to select?

Mayor Osler: I would like that very much better; I like the tax value per front foot or on the land; it is perfectly fair and legitimate, if it could be made constitutional—that is the bugbear.

Mr. Silberberg: Isn't it a fact that that is the way that lands are now valued, by the front foot. You go into a street that is improved by half a dozen houses, and there are probably fifteen or twenty lots not improved. In order to get at it exactly, they should value the land per front foot. Then they put the additional sum on as to the value of the improvement—upon the value per front foot of the land, then the improvements added to it—you can't have anything fairer than you have it at the present. But the way you arrive at the first value of the land, then the improvements, add the two together, and there you have your tax value.

Mr. Price: I say that is unfair.

Mr. Silberberg: Well, it is not.

Mr. Price: I am against it, anyway.

Mayor Osler: Now, there is one other matter pertaining to villages. On pages 44 and 45, in sections 97 and 99, there are provisions therefor the Board of Public service, which is the executive board of all cities, shall have power to advertise for bids on all public works, that exceed \$500. This leaves the council of a village with the awful power that they can let work costing \$50,000 without any competi-

tive bidding; it is a dangerous condition, if men are not honest. While sections 97, 98 and 99 provide that all contracts must be let by cities and villages, yet there is not a word in it that council shall advertise. The section is repealed that authorizes the bids; I do not remember the number of the section repealed, but it applies to all municipal corporations; it has been repealed, and they have re-enacted it for cities, but it is not re-enacted anywhere for villages. If you examine, you will find this is true.

Now, this is about all I desire to say. I have studied this thing pretty carefully. Yes, there is one other thing on page 5 section 10; I want to speak about that—about geese; it may seem a trivial matter, but anybody who has lived in a village will agree with what I say when I am through. The section says the municipality shall have power “To regulate, restrain and prohibit the running at large, within the corporation, of cattle, horses, swine, sheep, goats, geese and other animals.” Now, we have no geese in our neighborhood, but as in many other villages, our people, many of them, keep chickens, and there is nothing that will get up a neighborhood quarrel and that will cause more trouble to the mayor, possibly—with possibly two exceptions that I will make—those are dogs and children, I will put those first—but then I will place third, chickens. That section should be made broader, and I have interlined there, “Chickens and all other fowls and other animals;” that includes everything; it might as well be done right while you are doing it.

That is all I have to say and I thank you very much.

Mr. Worthington: About electing a president pro tem. of the council, in case of the mayor resigning or of his death, or in any other way vacating the office. It is provided that the president pro tem. of council shall preside at all regular and special meetings of council, but shall have no vote except in case of a tie. “When the mayor is absent from the city, or is unable for any cause to perform his duties, the president of council shall be the acting mayor. In case of the death, resignation or removal of the mayor, the president of council shall become the mayor, and serve for the unexpired term.” My experience in a village council has been that it very often happens that there is no man in the council qualified to act as mayor, and if I understand this section, council is compelled to name one of its members as president, who will become mayor, in case the office should become vacant.

Mayor Osler: I, myself, like that provision. Of course, out of six men, there ought to be a fair representative who will act. I think the

idea of electing a mayor pro tem. whenever council organizes, is an excellent one, for the reason that if the mayor is sick, or has to be out of the city, or in case of death, the council will have a head, whereas, where they look only to the mayor, if he is absent when they have a meeting, they come to the meeting, as it were, as a flock without a shepherd. I like the idea myself.

Mr. Worthington: But when it comes to appointing the mayor, don't you think it would often occur that they could get a mayor better qualified outside, than inside council?

Mayor Osler: That might be so, in some cases, yes.

Mr. Worthington: Why could it not be left as optional, but not restricting it to that body, for their selection?

Mr. Silberberg: Isn't it a fact that when a building is built next to a vacant lot, that it enhances the value of that vacant lot?

Mayor Osler: Yes; people understand that now, I think; but the tax value is what counts, under this Code.

Mr. Price: Under this section of the constitution, can the vice mayor become mayor with judicial power? "In case the office of any judge shall become vacant before the expiration of the term, the vacancy shall be filled by the governor, until his successor is elected and qualified." In other words, is there any such thing as a vice-judge?

Mayor Osler: Does that apply to mayors, do you think?

Mr. Price: This is the 10th section,— "All judges other than those provided." Another section provides that the legislature may establish as many courts as it deems fit, inferior to the Supreme Court, and we have Common Pleas Courts provided for, the Probate Court, the Circuit Court, and Justices of the Peace are provided for in the constitution. Then section 13 that I have quoted. I will state that after careful study of these sections of the constitution, recognizing that the mayor acts in the first place, as president of the corporation, and in the second place, as judge,— that no vice-mayor can act as judge; he may act as president of the corporation. The Code provides the mayor shall act as police judge, on page 58, in section 129.

Mayor Osler: I have that section now.

Mr. Price: The fact is, that each municipality becomes a court district; this is an inferior court to the Supreme Court, and inasmuch as the constitution provides that the governor shall appoint, in case of any vacancy in the mayor's court, if the mayor exercises judicial power, the governor must appoint, under the constitution, in order that the man

appointed may perform judicial functions; he may perform administrative functions without.

Mr. Worthington: Do you think it is a good idea to take from the people the right of petition? — not the right of petition, exactly,— but, under the present law, if you undertake to improve, you would have to get the consent of a majority of the front feet of the property; while under this, it does not require that, council may improve without getting that.

Mayor Osler: I think that is a good provision; we have always had that in Hamilton county; we have enjoyed powers under the old law that villages outside, possibly, have not enjoyed. That is the only way you can make public improvements, because you will find, in almost every village, one or two men who are speculators and non-residents, and they will never sign for anything, and they will hold all the village back until you can get their consent. The law now extends authority to the city, that two-thirds of council can make an improvement, whether the abutting property owners consent, or not. The reason it is two-thirds is, this is a majority with us, four out of six.

Mr. Price: Isn't this it, that if two-thirds of the property owners sign, a majority of council can act; if a majority of the property owners sign, then two-thirds of council must act?

Mayor Osler: I am not familiar with the old law in villages throughout the state, but I understand that the law in Ohio, outside of our village, is, that no difference if all the council should vote, it must start with the abutting property owner on the street. We have never had that law within my knowledge.

Mr. Price: You are acting under a special law?

Mayor Osler: Yes.

Mr. Worthington: With regard to the 25 per cent. assessment for improvements against the abutting property: We had an experience of that kind. A great many of the people who owned property or vacant lots, signed the petition, and then they were unwilling — the valuation was very low, running from \$50 to \$200 — and then they went to law and demanded that they should not be assessed only the 25 per cent., and the town then had to pay the balance for that improvement.

The Chairman: Has the sub-committee any program for the afternoon?

Mr. Stage: I am informed by the chairman of the sub-committee that he has received no word of anyone who wishes to be heard this after-

noon. It is probable there may be some one here who desires to speak this afternoon, as there was, this morning.

The Chairman: The Chair is of the opinion that the committee ought to give anyone who comes the privilege of being heard, if any one desires to speak. We have had an excellent program this morning, one we did not know anything about when we convened.

Judge Thomas: Then I move we recess to two o'clock this afternoon.

Mr. ———: I second it.

The Chairman: Before putting the motion, I wish to read this notice: (The chairman reads a notice from the State Fair Committee announcing that carriages will be provided for all members of the House who desire to attend the Fair on this afternoon.)

Judge Thomas: Mr. Chairman, I will change the motion, making it 3:30 this afternoon, so that members can get back from the fair grounds.

Mr. ———: I second the motion.

Mr. Silberberg: Now, the same motion was made last Friday, and it was lost, for the reason that we were going to adhere strictly to the program. I almost broke my neck getting here this morning. Are we going to waste an hour and a half now?

Mr. Denman: I think we ought to be ready for business.

The Chairman: The Chair is of that opinion.

Judge Thomas: With the consent of my second, I will withdraw the motion. As I understand the rules, we are to meet at 2:00 p. m.

Mr. Chairman, I now move that we recess to 2:00 o'clock.

The motion was seconded, and prevailed unanimously.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

THURSDAY, September 4, 1902, 7:30 P. M.

Pursuant to adjournment the committee met in regular session at 7:30 P. M. On roll-call the following members responded to their names:

Comings,	Worthington,
Guerin,	Denman,
Price,	Hypes,
Metzger,	Willis,
Thomas,	Stage,
Chapman,	Huffman,
Allen,	Sharp.
Silberberg,	

The Chairman: We have with us to-night Mr. Edward P. Moulinier, who is not a mayor, but who represents the mayor of the village of Norwood, Hamilton county, who will talk to you.

Mr. Moulinier: Mr. Chairman, and Gentlemen of the Committee: As representing a mayor merely, I hardly feel that I can talk with any authority upon the subject that I wish to say a few words about to-night, but if you will pardon that fact there are just a few things I want to say on the question of assessments. I have lived in the village of Norwood for about twelve years, and during a major portion of that time have had considerable litigation, always against the village, about assessments, and I therefore know a little about them. I don't believe there is any lawyer in the state of Ohio who can say that he knows everything about assessments. There are some 430 sections in chapters 4 and five subdivisions on the general subject of assessments and so many changes of the law have been made to suit the different municipalities that it is very difficult for anybody to say that he knows very much about assessment law in Ohio. I have always noticed in litigation of that kind in the courts in Cincinnati that when any lawyer begins to talk about ordinances, resolutions and special benefits that the bystanders immediately leave, and the better the argument is from a legal standpoint the more the people try to get away, because it is so uninteresting. I shall not,

therefore, feel it at all uncomplimentary should any member of the committee retire while I am trying to say something about assessments.

The code under consideration has, it seems to me, very admirably divided into two simple plans the question of what was formerly put into the statutes under the head of appropriations and assessments. There are three great operations of municipalities through their councils governing improvements of streets. There is first the appropriation of real estate, which was formerly assessed upon the abutting property after proceedings in court; then there is damages for change of an established grade, which also was gone about through proceedings in court and assessment back upon the property; and there was then the surface improvement of the streets by paving and sidewalks and sewers. Now, the code under consideration has divided that up into two parts.

You will find under section 10 all there is in the code about the appropriation of property and in very simple language, and I think they are, put together, all the proceedings necessary for a municipality to appropriate real estate. Under the Baker decision of the Supreme Court in the C. L. & N. decisions of our own Ohio Supreme Court — the other is the Supreme Court of the United States — no assessments for appropriation of property can be made back on the abutting property, and consequently this code has simply provided that the municipality shall pay for any such appropriation, so that leaves it all out of the question and we need not consider that in considering the question of assessments.

The question of damages for change of grade is taken up in section 49, and the only change or modification that I find there is as to whether the expense of a change of grade which is to be considered as damages resulting from an improvement — that is the way it is in section 2315 of the present statutes — the only doubt in my mind is as to whether the damages for change of grade is to be assessed back on the property or paid by the municipality. I gather from the fact that it follows section 48 that it is to be a special assessment, but it seems to me that it would be better if damages for change of grade were treated exactly as appropriation of property. Damages for change of grade is taking a man's property, or rather destroying it, and if you assess it back on him it seems to me it is appropriation without compensation, and I believe that there is a case now pending in the Supreme Court of Ohio in which my friend Mr. Collins, of Norwood, is interested, in which that question is raised, and I think that it would be better if some clause were inserted in either section 49 or 50 providing that damages for

Proceedings on Municipal Code.

change of grade should be paid by the municipality, and that would do away with all future litigation as to whether that was constitutional.

Now, that leaves section 48 which attempts in very simple and very few words to cover almost the whole scope of assessments back upon property for surface improvements — special assessments — and it seems to me that some changes can be made which would be applicable to every municipality in the state of Ohio and which would be of advantage by reason of the definiteness that could be put into the provisions.

The question of special assessments is an extremely important one. It is always a good idea to refer to an instance. As Mr. Collins told me this afternoon, in the last ten years in the village of Norwood we have made special assessments amounting to about a million dollars. About \$700,000 of that has been paid, leaving \$300,000 still to be paid. Now, if one village in Hamilton county has bonds outstanding of hundreds of thousands of dollars for special assessments, it certainly must be true that every municipality in Ohio have also large amounts of bonds concerned with the assessment back of improvements for streets, sewers and sidewalks. Consequently the uniformity that can be gotten by a board and definite statement of the proceedings necessary to improve would be advantageous.

Section 48, it seems to me, is indefinite. I don't know whether that section provides for assessments by tax valuation as heretofore set out under section 2269 of the statutes of Ohio, or whether it is an assessment by benefits. The difference is simply this: If it means tax valuation, then council would go over the valuation of abutting property on a street and find out the total tax value; then they would find out the amount of the cost of the improvement and divide that up by a percentage upon the tax valuations as above. By benefits, it means something entirely different. It means that any particular lot that either abuts on the street or is contiguous but does not abut can be assessed by the council, according to the benefit that the council thinks is conferred upon any one of those lots. I don't know from the reading of this which of those two methods of assessments is set out here, but the change making that specific could be easily made. It seems to me, if I may make a suggestion of that kind to this committee, which probably knows as much about assessments as I do and which is probably rather tired of hearing any more about them, would be this: To have the three classes of assessments that we already now have, and for this reason: In Hamilton county assessments have almost always been made by the

front foot. In most of the cities of the state I am told assessments are made by tax valuation and in the whole state of Ohio assessments always can be made by benefits, but nobody ever did it, because it was too cumbersome. I do not see any objection to leaving those three kinds of assessments so that they can be applied to one city that wants one kind and another city that wants another can have them. Assessments then can be divided up into three simple forms — assessments by benefits, by valuation and by front foot. The front foot assessment has been upheld by both the Supreme Court of the United States and the Supreme Court of Ohio in very recent cases, and therefore there is no question that it is constitutional. As a matter of fact, solicitors will say that the front foot assessment is the most feasible and is the easiest to make.

If you make assessments by benefits there might be some special section providing that a committee of council or a commission as is provided in the Statutes of Ohio, shall be fixed who shall determine how each lot is benefited. That is all that would have to be done. On valuation all that would be necessary would be practically to re-enact section 2269, which provides for a taxation district, where, for instance, there may be a lot in bulk, several acres abutting on a street, hundreds of feet deep. The council there has a right to fix the depth of a lot to the depth of lots in the neighborhood and put a tax value on it and assess it in that way. That could be enacted. Then as to the front foot assessment, nothing more is necessary than a section saying council may make assessments by the front foot for surface improvements.

Now, as to all of those three plans of assessment, it seems to me that it would be wise and it would redound to the credit of bonds issued for improvements to have the statute specifically and definitely say exactly what steps should be taken in making any improvements, whether by benefits, by valuation or by the front foot. The plan that is in use in Cincinnati and Hamilton county is something like this, and you will see how logical and it seems to me how simple and orderly the plan is. In the first place, when a street is to be improved, plans and specifications are prepared of the improvement. That is put in the hands of the engineer and he has those plans and specifications in his office so that anyone can see exactly what the improvement is to be. The next step is a resolution by council declaring it necessary to make the improvement, whatever it may be. The next step is a notice of two weeks or whatever it may be to the owners. That gives the owners a chance to object, and there being nothing detrimental to his interest in the proposed im-

provement the next step is an ordinance to improve, setting out the method of assessment, and that, as I said before, can be either one of the three methods that I have named. Next is advertising for bids in the public press. Then the bids are brought in open council and the contract is let by council to do the work. The work is proceeded with and the engineer upon completion of the work makes his report to council that the work has been finished, and then the final step of all is the ordinance assessing the property and stating how the installments are to be paid by the property owners and the kind of bonds that are to be issued by the municipality for this improvement. Those steps are all orderly, they are all simple and if they were set out in the code there would never be any trouble about the legality of any bonds that were issued by reason of these improvements. All that any lawyer would have to do would be to look at the statute, have a transcript of the proceedings of council, see that they were properly complied with, and the validity of the bonds would be determined.

I find upon consideration of these sections 48 and 49 that there is no provision for the payment of installments of the assessments by the property owners to meet the bonds. The usual rule in Hamilton county is to have the installments made in ten, with interest on deferred payments, and that is provided for specifically in the present Statutes of Ohio. It seems to me that that ought to be put in specifically, as there would be a question in case council wanted to do that, as to whether they could do it, the power not having been given in the code to council to do that.

I have examined carefully the repeals in the chapter of assessments and find that the eighteen sections not repealed would not interfere with the method that I have outlined but would simply aid in the carrying out of any one of those plans of assessment. As, for instance, the unrepealed sections providing for the assessment upon an owner of a life estate and how the liens of assessments should be made upon the property and how the solicitor can bring suit for the amount of the assessment. Then there are certain provisions for the overlooking or curing of informal defects in the proceedings of council. Those things are all unrepealed and would simply add to the validity of proceedings such as I have spoken of.

In the code as given here the question of the percentage of the tax valuations was raised by some of the solicitors from our part of the country, and it seemed to be the general impression that 25 per cent. of

the tax value was too small, that that ought to be raised to either 40 or 50 per cent., and that it ought only to be upon the real estate and not upon the improvement. I think Mr. Ossler this morning spoke of that and it is not necessary for me to say anything more about it.

That is about all that I care to say. I know that this is a frightfully dry subject and the only points I cared to make at all as representing Norwood was that the proceedings for assessments should be simply but definitely stated, if possible, in the code, so that the validity of bonds issued could not be questioned. The trouble with great simplicity and shortness in making any assessments is that where things are not provided there will always be a question as to whether the action of council is valid and you then run the chances, and not only the chances but the certainty of long and protracted litigation as to just exactly what council can do, unless it is stated explicitly what they can do in the law. That is all I care to say.

The Chairman: Have any of the committee any questions to ask of Mr. Moulinier?

Mr. Price: Mr. Moulinier, we are here considering this matter and besides that I will admit that I am not a very good draftsman and I am asking now if you and your associated, if you have any, can put that into legal phraseology? I would like to have it myself and I feel it would be of benefit to the rest of us.

Mr. Moulinier: As to that, I think that the committee of the League of Hamilton County Villages have spoken of that thing, and are working upon some such plan as that. And while what I have said is my own idea, something will be prepared on those lines by the committee and - will be brought up here next week.

Mr. W. R. Collins: That will be done if the committee cares for it, something to cover the suggestions of Mr. Moulinier.

Mr. Price: I feel we ought to have more than one way of making these improvements in order to give cities and villages the opportunity to make a choice.

Mr. Moulinier: I think that is a correct view. As I said, the statutes up to this time have recognized the three methods for the reason that one of them seemed more suited to one locality and one municipality and another to another. In Hamilton county we have always assessed by the front foot.

Mr. Price: We do that way in Athens, my own county.

Mr. Moulinier: Mr. McPherson, who was city solicitor of Troy for a number of years, said they always assessed there by valuation and they found that the easiest way and best for their town. Considering all these things and making the law general there would not be the slightest question as to the constitutionality of the three methods provided they are made generally for all municipalities and at the option of any municipality which may wish to adopt any one or the other.

Mr. Price: I will say further, I believe it is a pretty good thing to have consents of property owners. We have always worked under that and I do not see any reason why we should not continue, and that then the council should act. The law has been, if there were consents of two-thirds of the property owners the council could act. If there were half of the property owners consenting the council could act. It has been that way also with the villages.

Mr. Moulinier: In Hamilton county, where three-fourths sign the petition that does away with the limitation of 25 per cent. of the actual value of the property. That, I believe, only applies to Hamilton county.

Mr. Denman: Mr. Moulinier, under any of these plans under the constitution and the present decisions of the supreme court, regard would be had, would it not, to the benefits conferred?

Mr. Moulinier: That clause would have to be put in and that is already in the bill before the committee.

Mr. Denman: Doesn't that, then, in effect reduce it to one method?

Mr. Moulinier: I don't think it does, for the reason that there is now in the Statutes of Ohio a general provision of that kind, and even when council stated when property was benefited, as was done in Norwood in some litigation that I was engaged in, yet that did not have a particle of effect upon the law which declared that assessments back for appropriation was invalid, for the reason that although council declared that it was a benefit, yet it was not because they simply took the property and assessed it back; the point I make being that if the thing itself did not have regard to benefits the mere statement of that fact in the law or by council would not make it an assessment by benefits.

Mr. Denman: At the same time you cannot under any circumstances assess more than the property is benefited?

Mr. Moulinier: No, that general statement is correct, but the supreme court of Ohio has held that assessments by the front foot are valid under the laws of Ohio, even with the general provision in the statutes.

Mr. Denman: It would not make any difference how they would apportion the amount of benefit. Of course, I don't think that would be questioned.

Mr. Moulinier: The front foot assessment now is made at so much per front foot. If council declares that property is benefited that way, the courts have held that assessment is legal under the present statutes.

Mr. Denman: Do they say it would be benefited more to assess it that way than according to valuation, or less?

Mr. Moulinier: I don't know as to that. Of course, this question of benefits is something you cannot get any absolute, definite ruling on. While you say there can be no assessment except for benefits, yet when the supreme court says an assessment by the front foot, notwithstanding that law, is valid, it is valid, that is all. It is a matter of theory to say whether or not the property is benefited to that extent, but the courts do hold that the front foot assessment is all right.

Mr. Denman: I understand, and I agree with you on that, but as a matter of fact the front foot assessment must nevertheless exceed the benefit.

Mr. Moulinier: That is true. Who will determine that, the council or the courts? The courts have declined to.

Mr. Denman: If the property owner feels it is more than he is benefited, he enjoins the collection of the assessment and it is determined in the court.

Mr. Moulinier: There may be a provision in the statute by which council can have the right to determine that matter by the front foot.

Mr. Worthington: In case a piece of property is, say, 50 feet front and the assessed value was \$100, and the cost of the improvement was \$50, or 50 per cent., do you mean to say you could collect 50 per cent?

Mr. Moulinier: You mean under the present law?

Mr. Worthington: I mean under the present law.

Mr. Moulinier: I don't know. I am not familiar with valuation, because we have never done it that way in Hamilton county.

Mr. Worthington: In our county we do it all that way, by valuation, and we can not assess, as we understand, more than 25 per cent. of the assessed value when the improvement is made.

Mr. Moulinier: Do you add the improvement to the assessed value?

Mr. Worthington: We take the property as valued at the time the improvement is made. If it is improved that is taken into consideration.

Mr. Moulinier: Then I understand you can only assess 25 per cent. of the value.

Mr. Worthington: And yet you say you assess by the front foot?

Mr. Moulinier: Yes, but not to exceed 25 per cent. of the real value, which is to be determined, if it is brought in court, by experts.

Mr. Worthington: They do not take the appraisers' values?

Mr. Moulinier: No. It is 25 per cent. of the actual value at the time the improvement is made that is determined by expert testimony in court, if there is any question about it.

Mr. Metzger: I am no attorney, but there is probably a court rule for the adjustment of this difficulty. In the event that a man owns a corner lot and it is 50 feet on one street and probably 200 feet on another, how is that man's frontage determined?

Mr. Moulinier: Under the front foot assessment rule?

Mr. Metzger: Under the foot front assessment rule?

Mr. Moulinier: That is determined by the improvements on the lot, and where there are no improvements I understand the courts have decided it would be the smallest part, and under the Haviland case you can assess the 50 feet front and also 50 feet on the side, but not the rest of the 200 feet.

Mr. Metzger: I suppose there was probably some court solution of that.

Mr. Moulinier: That is the rule the courts have made in the Haviland case.

The Chairman: The Chair understands there is no other speaker appointed for this evening. Is there any other item of business to be brought before the committee?

Mr. Guerin: I think that concludes the programme for this evening. I would like to say there are a number of gentlemen here to address the committee to-morrow morning. I move the committee do now adjourn.

The Chairman: Before I put that I will emphasize the fact that there are a number to speak to-morrow on a continuation of this same subject and other subjects relating to city and village solicitors.

The committee then adjourned to meet on Friday, September 5th, at 9 o'clock a. m.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

SEVENTY-FIFTH GENERAL ASSEMBLY.

EXTRAORDINARY SESSION.

COLUMBUS, O., Sept. 5, 1902.

9 O'CLOCK A. M.

Pursuant to adjournment, the Special Committee on Municipal Codes of the House of Representatives met in legislative hall, Mr. Comings presiding. Under the program, the committee took up the consideration of the views of city and village solicitors and the representatives of the legal departments of municipalities in reference to the codes.

On roll-call, the following members responded:

Comings, Painter, Guérin, Price, Cole, Williams, Metzger, Thomas, Chapman, Allen, Silberberg, Worthington, Denman, Hypes, Willis, Gear, Stage, Bracken, Ainsworth, Maag, Huffman, Brumbaugh, Sharp.

The minutes of the previous meeting were read by the secretary and approved by the committee.

The Chairman: Has the Sub-Committee on Program any report to make?

Mr. Guerin: Nothing more than the names of the speakers, which you have already.

Mr. Price: I want to ask a question. I saw a copy of our proceedings, or a portion of them, printed. Are the proceedings all printed, practically, up to date?

The Chairman: The Chair is unable to state. Mr. Metzger, the chairman of the committee, reported to me yesterday that they were printed about up to date, and the printer had promised to have copies on our desks this morning, and Mr. Metzger has now gone to see why they are not here.

Mr. Price: Does that include the addresses of Messrs. Ellis and Bennett?

The Chairman: I think it does, yes. We have present this morning a number of city solicitors, according to the program arranged by our committee. Is Mr. Calvin, of Ashtabula, ready to speak?

Mr. Guerin: Mr. Davis, of Cleveland, is here.

Mr. Denman: The time has been fixed in the Senate to hear Mr. Davis this afternoon, and he would be pleased to be heard here this morning.

The Chairman: I think we can arrange. I will ask Mr. Swayne, of Hamilton county, to open the discussion. Mr. Swayne.

Mr. Swayne: Mr. Chairman, Gentlemen of the Committee—What I have to say this morning, will be in somewhat of a rambling manner. I do not intend to discuss before you the scientific problems of the code, but simply to point out some matters that we think could be bettered in the code that you now have under consideration; some things that have been overlooked, some things that have never been in the code,—just a few matters of that kind to which I wish to call your attention.

If those of you who have the code with you will follow me, I want to call your attention to the particular sections as I go along. Under the present section of the Municipal Code, section 10, on page 5, of this code, where it regulates and prohibits the running at large within the corporation, of cattle, horses, etc. Down in our county they are having quite a good deal of trouble over the question of chickens, and it is a question whether or not, that is included in that section. It seems to me that it is only adding a word or two, and by that you could add "chickens. ducks and pigeons"; those three we have quite a good many complaints about.

Mr. Price: After the words "other animals," I had inserted, "and fowls."

Mr. Swayne: That would be all right.

Mr. Cole: Isn't a chicken an animal?

Mr. Swayne: I don't believe it is myself.

Mr. Cole: Did you ever see the definition of animal, according to law? If they leave out chickens, they are taking a good deal of liberty.

Mr. Swayne: Then on page 6, section 13, is another matter that is giving us a good deal of trouble, and so far, we have been unable to regulate the matter, and that is bill-boards. Everybody who is around cities knows the bill-board question is one that merits attention, though I believe it is a simple matter, because the bill-board people are afraid, and the corporation people are as much afraid, and it seems to me, after the word "fences" the word "bill-boards and other structures," should be inserted. We would like very much if that could be inserted, because, as I say, anybody who is around a city will see the advantage of it. I might

say here that I am not only speaking for the village in which I am, but we, with the thirty other villages in Hamilton county, have met and discussed these matters, and we have practically agreed upon these things,—the representatives of the thirty villages.

Then line 126 of the same section 13, after the words “sewer tappers,” I think there should be inserted, “and vault cleaners.” We have quite a good deal of trouble regulating that.

On page 9, under the appropriation of property, in line 196, it says, “For opening, widening and extending streets,” but it does not provide for the change of grade, and I would change the wording there, “For opening, widening and extending the grade of streets.” In the villages around our city, we have to grade quite a good deal, and there is always some question about it. Now, in section 11, at the bottom of page 9, under the appropriation of property,—“In the appropriation of property for any of the purposes named in the preceding section, the corporation may, whenever the same is reasonably necessary, acquire property outside the limits of the corporation,” are the words here. Now, it does not say who is to decide when it is “reasonably necessary,” whether the courts, or the council, or what. I have stricken out the words “whenever the same is reasonably necessary,” and inserted the words “whenever the council deem it necessary.” There we have somebody who will attend to the matter. It might be that council would think it necessary to build waterworks, and to condemn some property on the outside; they might have to go to court to find out who deems it necessary, but if the council itself has that power, it will save all litigation, and in the end will save money to the city or village.

Now, on page 21, section 46, line 521, this section is here made applicable to all the cities and villages in the state and provides for the appropriation of the funds to the separate purposes for which they are to be used, in the same manner that your finance committee does with the State’s money. That is probably all well enough in the larger cities, but it would become an absolute nuisance in the villages, and create a whole lot of machinery for which there is no use, and if you would strike out the words “municipal corporations,” and simply insert the word “cities,” it will cure it. The difference is this: In the smaller villages, the council is composed of at least as good men as there are in the village; everybody * * *

Mr. Price: I think Nelsonville takes up some of her bonds.

Mr. Swayne: But would not Nelsonville be a city under this classification?

Mr. Price: Yes.

Mr. Swayne: I think that you will find in the villages where they have sinking funds, they will all come under the classification of cities. Our debt we take up year by year, and if, by and means we have a surplus of money, we will take that surplus and simply buy in the bonds and cancel them.

Council, in the villages, is the basis of all village government, and if they have to consult with half a dozen other people or boards, it will make a whole lot of unnecessary machinery. The simplest form of government that you can get in the smaller places in the State, the more practicable it will be, and the better and more popular that form of government will prove, and I think you will find that true in this case.

In section 58, I would strike out the words "municipal corporations," and insert "cities."

Now, in section 76 on page 33, I might as well take up three or four sections together; with the one you will find on page 33, turn to page 52 and look at 117 just a moment, and then we will go back to the discussion of the other. Here is a small section put in, numbered 117, in which it says councils of villages shall be governed by the provisions, so far as applicable, of sections 75, 76, 77, 78, 80 and 81 of this act.

Now, that section 76, in making the amendment, I would simply strike out on this other page, 76. In section 117, section 76 provides about councilmen at large, and the qualifications of the councilmen, and it seems to me that is not necessary to be applied to villages. 76 is not as vital, though, as 78, which provides—and every one of you who have villages in your counties should pay particular attention to this;—the present system now of passing pay ordinances, for instance, is by reading once, or suspension of the rules; under this section 78, no pay ordinance, or any other ordinance could be passed save by having three meetings. You might take it in a village like ours, where the men, most of them, are engaged in the city during the day; you could not get anybody to serve in council if they had to have three meetings a month. This, then, would require three months to pass each ordinance, or would require three meetings a month, before they could pass any street workman in the village. That should be left as it is at the present time, or at least, the pay ordinances should be passed at one meeting, either by suspension

of the rules, or by one reading. This is very, very important to the villages, and I imagine the same thing would apply all over the State, though in some of the larger villages they have two council meetings a month.

Mr. Price: In your village, is it the board of public affairs that does the contracting?

Mr. Swayne: No, it is the council direct. The board of trustees will do a part of that, but in the villages, under the present law, the council is everything, and I think it should be so under the new Code.

Mr. Denman: Wouldn't it be just as well to simply allow council the right to suspend the rules on all things?

Mr. Swayne: I think so, because, as I say, their territory in villages is small, and every man, woman and child knows the councilmen, and they are not going to do anything to harm their village. It is not like it is in large cities, where you only know a few people and represent a single ward.

Mr. Worthington: Under the present law, the rules may be suspended?

Mr. Swayne: Yes.

Mr. Worthington: Could you not do that by two-thirds vote?

Mr. Swayne: No, it takes three-fourths vote instead of two-thirds. In section 79—well, that is not in, that is omitted. Now, section 81 gives the mayor the veto power. I think that should not be given the mayor of a village. Under this it gives the mayor the veto power, but then goes on to provide that the ordinance may be passed over his veto by the same vote as that by which it was originally passed; that is simply adding machinery without accomplishing anything. If there be a necessity for the mayor of a village to have the veto power, then you should increase the number of votes which could pass it over his veto. I do not believe there is any necessity for the mayor of a village to have the veto power, and I can say the mayors do not want it—it is a power they do not care to have.

Then under the executive—and we had some trouble in agreeing about this. Some of our representatives do not object to having the mayor appoint the solicitor, and some want the solicitor to be elected. and probably this will be one of the hardest things to frame in the code, so as to satisfy the most people, unless you can use the method now in vogue. I believe it would be constitutional—I am not posing here as a constitutional lawyer—but simply in section 1706 it provides that

the officers of a village shall consist of certain officials. Now, I am not solicitor in my village—we have no office of solicitor—but I am employed as an attorney under a contract, for a year at a time. If you do not have a solicitor at all, then under the corporate right to sue and be sued, you have a right to employ an attorney. If you can get around to agree that it is constitutional—and I believe that it is—it has never been attacked, I believe it can be provided that council may create the office of city solicitor, if they want it, or leave it vacant, as they please. If they need an attorney they can, by resolution, employ one.

Mr. Comings: Do you think it necessary they should act under that section? Why not leave the whole subject out—would not that imply that the council would have the power to employ an attorney?

Mr. Swayne: I presume they would have the power, if the words were not there at all. Of course, I understand the position you people are in, I have been in your place, when we did not have as much responsibility as you have now. You have the greatest responsibility that was ever placed upon anyone since the adoption of the constitution in 1851. Nobody expects that you can make a perfect code, but you want to make it as perfect as you can, and you deserve credit in accordance with your object.

Mr. Comings: Would you not avoid the constitutional question by omitting the words, and leave it as suggested?

Mr. Swayne: As I say, I believe the other is constitutional, and if it were not it would be simply that one section.

Mr. Price: I would like for somebody to cite me where it is unconstitutional, and to show some authority; no one has been able to do it, but I can show authority where it is constitutional.

Mr. Swayne: I don't believe that our Supreme Court, as now constituted, in the cases they have decided touch the question. I believe we have a right to designate, to give the power to council that they can do certain things; but the council of a municipal corporation can do nothing that you do not give them the power to do.

Mr. Allen: Then you would insert "may" instead of "shall"?

Mr. Swayne: Yes. In the larger places, for instances, as we have in our county, Norwood, which of course is not so beautiful or desirable as our village, but is a larger place, they have a solicitor; but we are so law-abiding that we haven't as much use for a lawyer as they have at Norwood, and the same way with a number of other villages in the state. To leave it optional with council would give perfect satisfaction.

Mr. Painter: Mr. Swayne, one of the important questions this committee has to take under consideration is, whether or not we have the right, under the constitution, to make a code that will prove flexible enough so that we can give certain villages the choice of certain governments. Now, if we would heed your advice in this matter upon, say, the matter of the city solicitor, that would be a flexible form of municipal code?

Mr. Swayne: Yes.

Mr. Painter: Whether we can do that, depends upon whether or not our work would be constitutional; and if we could do that, then the greatest question that we have to consider in the matter of passing this code is overcome, and we can make a code that will suit the larger cities and not be too cumbersome for the smaller towns. You are clear on that point, that this matter would be constitutional?

Mr. Swayne: Yes.

Mr. Painter: Well, if we can do that constitutionally, we can get along.

Mr. Swayne: It is true the Supreme Court has not passed upon that question, but from their other decisions, I am inclined to think it is constitutional, and that you can make a flexible code for the cities and villages.

Mr. Painter: So am I, sir.

Mr. Worthington: Isn't it a fact that the present form of government which we have in villages is satisfactory to a great majority of the people?

Mr. Swayne: I think that is true.

Mr. Worthington: And do you not think, in some of these suggested changes, it will not be so satisfactory to villages?

Mr. Swayne: Oh, yes. I think so, if you would make a sinking fund, compulsory, and a Board of Public Safety.

Mr. Price: A Board of Public Affairs, perhaps?

Mr. Swayne: I think if you would do that, it would be very unsatisfactory. We have public works in Hartwell, and we have no trustees of waterworks, or anything of that kind — it is all done by council, every man does his part of the government, they raise the money and expend it, and they do it economically and do it well,— they make it go around, and if that simplicity can continue, it will be all right. We have some other villages in our county where they have Boards of Waterworks Trus-

tees, but they can easily be floated back to council, much easier than to create new machinery for the village government.

Mr. Painter: Now, Mr. Swayne, the fact that you have not been here and heard the speakers on this code, leads me to say this: that the position of Mr. Ellis on this code was this: Under the article of the constitution that holds that all laws must be uniform, that that does not apply simply to what laws the legislature may pass, that is, as to their uniform applicability, but he goes a step further and says that all the laws that the legislature of Ohio may pass must not only apply to every city in the state of Ohio, but that it must be operative in every city alike, in the state of Ohio. That is, if we pass a law here, saying that if a city over here does not want to have the same government that you have in Cincinnati, it is optional with it, whether or not it has it,— he says that would be unconstitutional, because the government we pass for cities must operate exactly the same in Cincinnati as in Sidney.

Mr. Swayne: If that be true, then when you adopted this Code, every council in every city in the State of Ohio must pass exactly the same ordinances, and have exactly the same ordinances, and that would be an absurdity on its face. Every village would have to pass the same ordinances and have the same penalties throughout,— there could not be any question of that. I don't believe that any constitution ever intended you should be hidebound by anything of that kind.

Mr. Painter: That was in a private conversation with Mr. Ellis, and I don't think I am misquoting him; I think I have it right.

Mr. Denman: Would it not be expedient and wise, then, to add, on page 4, following the first clause in section 7, line 68, this amendment,— “and villages may, when council deems it necessary, employ counsel?”

Mr. Swayne: That would not hurt, and it would make the matter very much clearer, but that would not be necessary, because these are corporations and have the power to sue and be sued, and that, of course, implies that they have the power to employ the proper advice in the premises: but I think your suggestion would be very good, and should be in there. You should not leave anything to be implied, when you can put it in the Code and thus make it clear and plain to every one; I think is true in regard to every law.

When I speak of the Board of Public Affairs — Board of Trustees — that is expressing my own opinion more than it is the opinion of all the villages, because some of them had trustees of public works, and what I

say in that regard is my own private opinion. I do not want to say that I represent all of the thirty villages on that part of the proposition.

Under the appointing power of the mayor: I think all the appointing power of a mayor of a village should be exercised with the consent of council,— I think that should be added. If, under any circumstances, the mayor and the council should be at loggerheads, and the mayor should appoint an official that would not work in happy conjunction with council, you can see what the result would be. The mayor has no appointive power at all now, except in some cases of vacancies in elective offices, and then, as a common courtesy, I think, he may appoint.

Mr. Price: Does not the mayor of a village appoint the police?

Mr. Swayne: That is the way we do; but I think it is a kind of a common custom, I do not think it is legal.

Mr. Painter: I would like to state to Mr. Swayne one more objection. Take, for instance, the situation in this town at the present time; they have a mayor here who is at loggerheads with his council most of the time. The fact is, that council has tied the mayor's hands. Don't you believe it would be better, at least in some instances, if we could make it so that the mayor would not need to go to council?

Mr. Swayne: I think that is true in cities. If you are going to make the mayor responsible, make him so responsible that when anything goes wrong, you can lay your hand on the man; but in the villages, we don't have that trouble.

Now, there is another thing, where you have the five years' residence in a village, before a man can hold office. It seems to me that is rather a far-fetched proposition, and it would be especially burdensome on our villages. Perhaps the best man in our town for mayor might not have lived in the village five years.

Mr. Painter: I will say we have made up our minds to that, long ago.

Mr. Worthington: What do you think about the mayor having power, in case of a tie, to cast the deciding vote? It is not designated here, but under the present law, where there is money to be expended, he has not the right to vote; but I think, according to this section, he can vote on any question.

Mr. Swayne: I think it would not hurt anything to give the mayor the deciding vote on all questions; I think that is a safe proposition.

Mr. Price: To vote on ordinances?

Mr. Swayne: He cannot, now. There might be some question about giving it to him then; it takes two-thirds there, so that in that case it would hardly be applicable.

On page 58, under "Judicial." There each municipal corporation is made a judicial district. In reading that over this struck me: That in many of our municipal corporations we can regulate inside affairs, but some one can go just outside of the corporation and establish a saloon or a garden, or something of that kind, over which our municipality, or police authorities have no jurisdiction. It seems to me if it could be added that the police jurisdiction of each municipality should extend to territory within half a mile of the boundary line of the corporation, so long as it did not over-lap any other municipality; that would give each municipality the police power of regulating and preserving order around the various villages.

Mr. Comings: Isn't that now in the statutes?

Mr. Swayne: I believe so, but it is not effective; I have never looked up the legality of it.

Mr. Comings: It has been exercised by municipalities in the northern part of the state.

Mr. Denman: Do you favor conferring police powers upon the mayor in villages? I mean judicial power for police purposes?

Mr. Swayne: Oh, yes; I believe that is true.

Mr. Denman: The constitution is, however, that the judicial officers must be elected by the people of the district in which they serve, and the mayor, of course, would only be elected by the municipality—within the corporation.

Mr. Swayne: There might be some question there; I have not looked that matter up.

Mr. Cole: How about the jurisdiction of the officers elected in the townships? Wouldn't it conflict with the police regulations of the municipality, by your plan?

Mr. Swayne: Hardly ever, because they have very little police organization in the township.

Mr. Cole: But in such cases as it would—would there not be a conflict there?

Mr. Swayne: Oh, it might cause a conflict, yes. That suggestion just came to me since I have been in Columbus.

Mr. Worthington: You speak of Section 126, Trustees of Public Affairs; now, I suppose in your village you have a board of health?

Mr. Swayne: Yes.

Mr. Worthington: Now, this Board of Trustees really takes the place of the Board of Health; it gives them more power than the Board of Health has, but it creates no new officers.

Mr. Swayne: That might be all right. As I understand then, you retain all Board of Health men?

Mr. Comings: We retain all Board of Health officers.

Mr. Worthington: But this Board of Affairs is the head of the health department.

Mr. Willis: Mr. Swayne, your reasons for not giving the veto power to mayors of villages, I did not quite get?

Mr. Swayne: The reason, in short, as I look at it, is just this: The mayor, under this code, is elected at the same time of the council, and the councilmen are elected for the purpose of passing ordinances; they are all elected at large, and by that means they are held responsible for the ordinances they do pass, and I believe that it would cause less friction between council and the mayor, and the less friction that will be caused in the working out of the machinery of municipal government, the better it will be; and I believe the mayors all express their feeling that none of them desires the veto power; they want the responsibility to go to Council.

Mr. Williams: Would you be in favor, Mr. Swayne, of giving the mayors of cities the veto power?

Mr. Swayne: Undoubtedly; because there, under this code, they only have a few people elected at large. If I were making this, I would elect one-third of the councilmen at large in the city, but still, I would give the mayor the veto power in the large cities.

Mr. Hypes: We misunderstood you. You would not strike out Section 81 that refers to the power of veto by the mayor, but you would amend it so as to give that power to the mayors of cities?

Mr. Swayne: To the mayors of cities, only.

Mr. Hypes: You said you believed in holding the mayors of cities to the greatest accountability. Along that line, would you favor, in villages, giving the mayor the power of appointment of the city marshal, for the same reason?

Mr. Swayne: Yes, I think so; because he is a kind of police officer, under this, and if that is to be continued, he should have jurisdiction over the police power.

Mr. Worthington: Do I understand that you are in favor of giving the appointment of the marshal, to the mayor?

Mr. Swayne: Oh, no. I do not understand it that way. I would elect the marshal, I believe. The marshal in most villages does not amount to anything. For instance, in our village, we elect the marshal; he draws no salary as marshal, but we pay him a salary as policeman.

Mr. Worthington: About the mayor having power to vote. Take it in a village where they have six councilmen; he votes on all questions?

Mr. Swayne: Well, it takes two-thirds to pass anything in council.

Mr. Worthington: As I understand it, you can have three votes each way, and then the mayor casts the deciding vote?

Mr. Swayne: Well, I wouldn't give him the power there, in passing an ordinance.

Mr. Worthington: He votes on all questions, according to this, even where there is money to be expended.

Mr. Swayne: Yes, I think I would take that clear out; it would be better safe-guarded.

Mr. Worthington: On all questions where council is three to three, the mayor casts the deciding vote on any ordinance or resolution?

Mr. Swayne: I think that should be left out.

The Chairman: The next speaker will be Mr. Calvin, city solicitor from Ashtabula. Mr. Calvin.

Mr. Calvin: Mr. Chairman and Gentlemen of the Committee—I come from the extreme northeast part of the state, from the benighted city of Ashtabula. Now, it is evident to me, gentlemen, from the remarks made by the city solicitors preceding me, that you have here a very difficult problem. You have a constitution that you have heard more about in the six, or in the last three months than we have heard in the last twenty-five years, and that is the trouble, apparently, and a serious trouble.

This code has many good features, very many of them, but to make it apply to every city, regardless of its size and condition, would be like making a coat, or a suit of clothes, to apply and be worn by a boy ten years of age and a man of twenty-five. For the boy, it is too large, entirely; there are too many pockets in it, too many places to dispose of matters, and it would confuse the boy and stunt his growth remarkably.

Now, in Ashtabula, we have about thirteen or fourteen thousand population; the city of Cincinnati, perhaps, nearly 400,000—Cleveland claims to have that, and I guess Cincinnati is nearly the same—and the coat that would fit Cincinnati, would not fit Ashtabula at all; we couldn't wear it. I was rather making an estimate of what it would increase the expenses of our little city, and I estimate it would amount to perhaps \$15,000 extra, that it would cost us in a year to run our city; if we undertake to run our city substantially the same as Cleveland, it would take about \$25,000. Now, then, gentlemen, it does seem to me that from the history of this state with reference to municipal legislation for the last fifty years, it would certainly indicate that if the constitution has been violated and ignored, the time has arrived when you ought to have that constitution amended. It is impossible, I think, to make a constitution that would last for centuries, regardless of the growth of the people, in population and in wealth and in their surroundings. Now, I think the constitution is just like every other law or code—it needs to be amended once in a while in order to make it suitable for the times. Fifty years ago, or fifty-one years ago, at the date of the making of this constitution, the citizens in the state of Ohio were greatly different from what they are to-day; the constitution then would be all that was necessary to govern or control the municipal corporations of the state of Ohio, without much jarring. Well, last summer, the Supreme Court passed upon the government of Cleveland. For many years this special legislation, as it is called, has been permitted to go on until it has become firmly established, and now, in order, in my opinion, to even matters up, and make a municipal code that will be equal to all the people, the constitution should be amended so that you can have classification of cities, and have the cities divided into at least three classes, and then not have the same rules to govern the whole of them, but have rules applying to and governing the different classes.

Now, in Ashtabula, we have had heretofore a mayor who has been the executive officer, and we have gotten along very well; we have no trouble in that department at all; neither have we in the council any difficulty. Now, to put into Ashtabula all of these different boards provided for the cities such as Columbus or Cleveland, which Cleveland has now, substantially, would be placing upon a small city a burden that it is not able to bear, and should not have. I am not going over this code section by section, because it would take too long, and from what the speakers before me have said you cannot make this code, without

many changes, suit all of the various cities of Ohio, or make it such a code that they can work under it economically.

There are some things here which I do not apprehend that you can keep and pass this code in its present form and that, perhaps, will call for a constitutional amendment, submitted to the people. But take the police court; that is one thing to which I do wish to call attention, because that is something that when you do pass it, takes effect pretty soon. Now, then, in the appointment of a police judge, section 129 provides that there shall be elected a police judge in all cities. Now, a city of 5,000 population does not need a police judge, although with us we have one by reason of special legislation, and that is well enough for a city of the size of Ashtabula; but prior to the passage of that special act the mayor performed the duties of a police judge in addition to his other duties. But in a city of five or six thousand, I do not think there ought to be a police judge at all. Now, this code also provides that that police judge shall have a clerk; it is not optional, but it says there shall be a police clerk. Now, the police clerk is not needed; the police judge ought to be able to attend to those matters himself. But there is another thing in that code: That upon a conviction in a police court, the defendant shall have thirty days within which to file a motion for a new trial. Now, I would like to know what police court in the state of Ohio could do business under that? If they had thirty days to file a motion for a new trial and then fifteen days' time after that to file a bill of exceptions, and have that signed. Now, you all understand about that; in the Common Pleas Court only three days is allowed in which to file a motion for a new trial, if I remember right.

(At this point a recess was taken, on account of the convening of the House of Representatives. After the recess, the committee again met, and Mr. Calvin proceeded with his address as follows:)

Mr. Calvin: I believe I was discussing section 112, which section provides for thirty days' time within which to file a motion for a new trial in the police court. Now, it is my experience—and I have had considerable experience in police courts—and I think every lawyer and every police court judge will bear me out in saying that that provision would so block proceedings in the police court that they could not be carried on; it would be taken advantage of; it is giving the defendant in the police court a greater right than he possessed in a court of common pleas, and it would block the whole business, so that the police court

judge could never do the business that would come before the court. That certainly should be limited to three days—within three days.

Mr. Price: Would you prepare an amendment, in general terms, making the procedure of the common pleas court applicable to procedure before the police court in this matter?

Mr. Calvin: That has been the law as I understand it, heretofore; the same rule applicable in the police court, in that respect, being made by the court itself; it works all right enough.

Mr. Price: I asked you to do that, because we have asked some others who have come here to prepare their amendments.

Mr. Calvin: Well, I certainly think that should be three days, instead of thirty; I have an idea that was simply a clerical error in the draft of the bill.

Mr. Denman: I think that is what it is.

Judge Thomas: If that were changed to three days, then do you say you would not object to the fifteen day limit for the bill of exceptions.

Mr. Calvin: I would not, no, sir.

Judge Thomas: That would be all right?

Mr. Calvin: Yes; although I would make it ten days instead of fifteen; the more expedition with which you do business in police court, the better.

Now, there is another peculiarity about this section providing for a police judge; the police judge is given jurisdiction within four miles outside of the city limits. Now, I think that should be confined to the city limits; because anyone charged with a misdemeanor outside the city limits, is deprived of having a jury trial in his own vicinity; the jurors are taken from the citizens in the city, and the police court cannot call them outside the city; so I think that the jurisdiction should be confined within the limits of the city.

There is another thing, and that is singular to me, although I believe it has been mentioned before, and that is, that anybody can be a police judge, under this section of the statute. This code provides for a solicitor who must be admitted to the bar and be a practicing attorney—or, at least, admitted to the bar, whether a practicing attorney, or not; but the court that is to decide and to pass upon all question that arise in misdemeanors and every offense, less than a felony, under this Code, is not required to be an attorney. Now, those of you who are attorneys, know how humiliating it is for an attorney to get up and argue before a court that has no knowledge of the law, whatever; the interests of the defend-

ant, his property interests are always at stake, more or less, and if the solicitors should be a lawyer, why should not the police court, the police judge, I mean, also be a lawyer? He is to pass upon the law as given or argued before him by the attorneys. I certainly think that the police judge should be a lawyer, not that I ever expect to be a police judge; I do not want to be, but I would like, when I go into police court, as I frequently have gone, by virtue of the position I occupy at the present time, as solicitor of our city,—I would like to address a court who is a lawyer.

Mr. Price: Can you put a qualification to an elective office?

Mr. Calvin: You do it in this code for city solicitor.

Mr. Price: But is it of any validity?

Mr. Calvin: Why, yes; if the police court is a court of record.

Mr. Price: Who is going to be the judge of the qualifications? Who is going to say whether the man is a lawyer or not? Who is going to take the evidence that the man is a lawyer?

Mr. Calvin: Oh, well, we suppose that we have a Supreme Court Commission to admit young men to the practice of the law, and to say whether they have the requirements necessary.

Mr. Price: But what I was meaning is, that when it comes to a nomination to an elective office, and the people nominate a man who is not a lawyer, even though the qualification is prescribed who is going to determine that fact that he is a lawyer, in order to determine whether he is qualified or disqualified?

Mr. Calvin: Who determines the fact of the qualification of a common pleas judge?

Mr. Price: There is no qualification, I think.

Mr. Calvin: He is required to be a lawyer.

Mr. Price: I doubt it.

Mr. Calvin: Well, I may be mistaken, but I think no.

Mr. Price: I do not think there is a qualification on any judge.

Mr. Painter: The judge of the Supreme Court of Ohio, then, need not be a lawyer, as far as the law is concerned?

Mr. Calvin: That may be.

Mr. Silberberg: Mr. Calvin, on page 40, section 90, line 10r6, it says the solicitor shall be an elector of the city and admitted to practice law in the courts of Ohio. Don't you think that it would be advisable that he should have at least five years' experience before he was appointed to that office?

Mr. Calvin: I do, sir.

Mr. Silberberg: You would recommend that?

Mr. Calvin: Yes; and I will give you my reasons. The laws are more complicated that refer to municipalities, to municipal corporations, than in regard to any other, and there are many suits brought against municipal corporations for damages and other matters, and it requires a man experienced in the practice of law. There is no man just admitted to the bar, seldom, if ever a man just admitted to the bar, that is capable of handling cases of that character, without calling some one in to assist.—But I don't ask that that amendment be made at all.

Mr. Price: I am frank enough to say to you, Mr. Calvin, that the question of putting a qualification upon the probate judge, a qualification of the kind you mention, has been before me ever since I have been in the legislature. My best judgment is now, that on an elective office, you cannot place a qualification of that kind, or practically, of any other kind. Every citizen that comes under that requirement, must have a right to run for that office. I do not see how you are going to limit it. When you come to appointments, where there is a discretion in the man, you might control it; but I could not find anything that would help me out to create that for a probate judge.

Mr. Calvin: That may be all right; but I don't know but what I would make it by appointment, then.

Mr. Price: The constitution prohibits that.

Mr. Calvin: Now, there is a question in reference to the city solicitor: Under this municipal code as it is now, he may be appointed by the mayor. My opinion is, that he ought to be elected; it ought to be an elective office. I do not desire to take time to go over this section by section, but with reference to cities the size of Ashtabula, and smaller cities, having these different boards, I wish to say a word. This code may be all right in many respects, and perhaps generally, in a city like Cleveland, or Cincinnati, and even in a city like Columbus; but take the smaller cities, and I think that Board of Supervision could be done away with, if the constitution permits it, and if not, then I think the constitution ought to be amended. I think that every man realizes that fact, because it is admitted by the necessity for the special acts that have been applied for to this legislature. and others, so as to enable the different cities to carry on and conduct their business, as they found to their best interests and that is what has called for the special acts, and I don't think they

need any further argument on the question that all cities cannot be governed alike, than the past history of these cities. If we have got away from the constitution, let us get a constitution that will meet the times in which we live. I believe in the classification of cities, and in home rule, home government. The state should pass laws saying what a city or village should not do, and then let them have home rule; they will understand better what they need and what they want than anybody else. You could not tell what all the cities in Ohio need; you could not prescribe a medicine that would cure all ills in the different cities; some want one thing and some want another, and they ought to be left to decide that question for themselves.

In this code, the merit system, or civil service, for police officers, meets with my hearty approval; it ought to have been enacted long ago. That system makes men, when they are in the position of policemen, understand that the situation does not depend upon the serving of any particular person for lord and master. I believe in civil service, in the merit system; but I do believe that this code, enacted as it is now, cannot give satisfaction to all the cities in the State of Ohio, or to the villages; I do not believe they can do business under it.

Now, another thing: If you were to adopt this code, making the same rules with reference to the different boards of officers apply to all cities, you limit us in this year to 10 per cent. of a general tax levy, we could not run on that in Ashtabula, and how could the smaller cities do it? It would take more money than that.

Mr. Cole: I understand you desire a constitutional amendment?

Mr. Calvin: I do.

Mr. Cole: It would take several years to enact that in law; we must have a permanent form of government. Do you think we could get any code, Mr. Calvin, that would prove satisfactory to all the cities and villages in the state?

Mr. Calvin: Not a code that would apply to all equally. Now, if you could enact a code by which you could give the different cities the privilege of a sort of home rule, for instance, if you could enact a code for these different cities that might apply to every city in the State of Ohio, and leave it optional with them as to whether they will have it all, or not, that might do.

Mr. Cole: You say that this form of government will cost your city \$15,000 more per year than your present form?

Mr. Calvin: I do.

Mr. Cole: And you believe in home rule?

Mr. Calvin: I do, yes.

Mr. Cole, Well, hasn't the council the power, under this bill, of limiting the expenses of government, as it chooses?

Mr. Calvin: No, not fully; they fix the salaries, under this code, of the different officers. But here, this code provides, for instance, for a police judge. Now then, in a city of 5,000, they don't need a police judge any more than a wagon needs a fifth wheel.

Mr. Cole: Then you are in favor of making the mayor eligible to the office of police judge?

Mr. Calvin: As he was before.

Mr. Cole: I guess all the rest of us are, too. Haven't you water-works trustees in your town?

Mr. Calvin: No; I wish we did have them.

Mr. Cole: Have you any gas trustees?

Mr. Calvin: No.

Mr. Cole: Have you cemetery trustees?

Mr. Calvin: Yes.

Mr. Cole: Have you hospital trustees?

Mr. Calvin: No.

Mr. Cole: Now, these two boards, composed of seven members, in my town, will take the place of five boards composed of from 15 to 17 members, comprising, in all, 15 to 17 members, and inasmuch as you believe in home rule, and that this places the power of establishing the salaries, fixing the salaries, in the hands of council, I do not see any reason why the council has not the absolute right to determine just the amount that your government shall cost.

Mr. Calvin: They have.

Mr. Cole: And I cannot see how you figure up that this government is going to cost \$15,000 more per year than your present form—I would like to see your figures on it.

Mr. Calvin: This code provides for the election of not less than seven councilmen, that to be a salaried office, the council to fix the amount of the salaries.

Mr. Cole: Don't you believe in that — don't you think that is right?

Mr. Calvin: Yes.

Mr. Cole: Then your government ought to cost more than it is costing now?

Mr. Calvin: It is not costing us that now. But I believe in that, and I agree with this, in reducing the number of councilmen — I think that is wise — and having some of them elected at large. Then this provides for a Board of General Supervision, of three directors, to be elected; they are salaried. We do not have those now, and the salary is to be determined by the council. Then you provide in this code for four directors of public safety who are to be salaried.

Mr. Cole: Council has the right to say?

Mr. Calvin: Yes; they would not make it too little any way. Then you provide for a clerk, and you provide for a police judge.

Mr. Cole: If they do not need any clerk, council need not provide for that. It is every bit left in the hands of council, and whether your government is going to cost you \$15,000 or more, or less, depends entirely upon your council, — which is in absolute harmony with home rule — your theory of home rule.

Mr. Calvin: Well, my experience has been that where you create an office to which a salary is attached, that office is always filled.

Mr. Cole: Aren't you in favor of that? Isn't that in accordance with your theory of government?

Mr. Calvin: Well, I don't want so many officers for a small city. But what I say is, that the 10 per cent., or the ten mills on the dollar, won't pay the running expenses of any such government.

Judge Thomas: What do you think the limit ought to be for small cities, for the tax limit?

Mr. Calvin: I think that limit is all right; I agree with the limit of 10 per cent.; I think it is in the right direction, but if we create so many offices, and have such offices salaried, then we have not enough money to run that government.

At this time the regular work of the committee was suspended, and the committee went into executive session. At the close of the executive session, the committee recessed, to meet at 2:00 p. m. of the same day.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

FRIDAY, SEPTEMBER 5, 1902.

2:00 P. M.

The Committee met in regular session pursuant to adjournment.

The following members answered the roll-call:

Comings,	Willis,
Price,	Gear,
Cole,	Stage,
Williams,	Bracken,
Thomas,	Ainsworth,
Chapman,	Huffman,
Silberberg,	Sharp.
Denman,	

The Chairman: The Committee is acting under the programme with solicitors from cities and villages. Mr. William R. Collins, of Norwood will be the next speaker. He is the village solicitor of Norwood.

Mr. Collins: Mr. Chairman and Gentlemen of the Committee: We are here to-day in response to your invitation extended through the press and otherwise, to offer to you, if you care to hear us, such suggestions as we think proper at this time. We are here not to criticise the code under consideration, not to say generally wherein it is deficient, but to suggest specifically where, by virtue of the power vested in you, you can aid the municipal corporations and at the same time carry out promptly what you are here assembled to do.

In treating the question of a municipal code the proposition resolves itself into two general classes, first the classification and organization of the cities and villages as required by the Constitution, and second, after you have classified your cities and villages, then you have the consideration of the organization of those communities so divided, which has to do with the officers who carry out your laws. After you have determined that, your next general subdivision of the question resolves itself into the powers that you shall delegate, by virtue

of the authority of the Constitution, to the municipalities, to be worked out by ordinance and resolution through their respective councils and through the executive officers that you provide in your code. So that in that line I want to present to you this matter as briefly as I can, appreciating the fact that a tiresome discussion does not add anything to the general information on the subject. I will treat first with reference to the officers that you propose to provide under this code.

I am in rather a funny position before you at the present time with reference to Norwood. The village of Norwood has had a wonderful growth, it has the most wonderful growth, I believe, of any other community in the state of Ohio. Norwood was incorporated in 1887, in 1890 had a population of 1,250, and to-day has a population of 8,000 inhabitants or more; and I want to show you later why it has been possible for us to grow and expand. It is because the existing laws have been favorable to us that these things have been made possible.

The people of our town decided in the last spring election to advance from a village to a city under the existing laws. That was done by a petition signed by 100 freeholders who requested council to present that matter to the people at the general spring election. The people voted in favor of advancement and the next final step required of the people of Norwood is for the council to pass a resolution declaring that such advancement has been declared by the people and that will make it final. We are waiting to see what the code will do with reference to this classification, so that if you leave the classification at five thousand we are interested in the proposition of laws that affect cities. But if you don't have that line of demarkation but change it to a higher figure, then we may be a village. We don't know exactly where we are at just now. So that I can speak generally on the one hand for a village and on the other hand for our city—we call ourselves a city, anyhow,—and I can speak further by authority of our organization of the thirty villages of Hamilton county who have met and discussed and studied the provisions of this code.

Now, gentlemen, with reference to the organization of Norwood as a city. If the present law is not changed the statutes of Ohio require that we organize at the next spring election the village of Norwood as the city of Norwood. We will then be required to elect the officers provided for in section 1709 and from that time on Norwood will be in fact a city with every power of a city.

We have to-day a large number of officials in Norwood. We are a patriotic people and very few of those who hold office get a salary. We have by election the mayor, clerk, treasurer, a solicitor and a marshal. We have four wards and we have two members of council from each ward. We have three waterworks trustees who manage and control our waterworks and electric light plant and they are paid a salary, and they appoint a clerk; and we have in addition to that a board of health of five members, with a health officer appointed by the board and an inspector of plumbing appointed by the board. We have a sewerage commission of five members, we have a platting commission of five members and we have a village engineer.

Now, under the code as proposed it will make a smaller number of officers for our community. We would have seven members of council instead of eight as we now have. We will have the same mayor, treasurer, an auditor instead of clerk, and solicitor, and we would have our marshal, but we would have a board of public service and to the board of public service would be delegated the powers that are now exercised by the committee of council known as the committee on streets and grades, and we would have our board of public safety that would look after our police and if the ideas that I have heard expressed are carried out, could look after the health of the community and appoint the health officer. The board of public service could control very well the waterworks and electric light plant, so that we have nothing to say with reference to the proposed boards under this code with reference to cities. We have faith and confidence in our council and we do not believe, notwithstanding what I heard this morning from the gentleman from Ashtabula, that it would add to the expense of our local government.

Mr. Thomas: Do you prefer electing this board of public service or having them appointed?

Mr. Collins: Under the Nash code I believe it is elected.

Mr. Thomas: Which do you prefer?

Mr. Collins: We would prefer to have our officers elected by the people. I want to say right there, Judge, in our community, and it is true in a great many of the smaller communities, the government of the city or the village is very dear to the hearts of the people and so far as they can they want to have the right to elect all the officers that are required to carry out their government.

Mr. Thomas: One other question. Do you prefer to elect all three of the board of public service at the same time, or elect one each year?

Mr. Collins: That is not so very important and I don't believe it makes much difference. We have now in council a rotating system, that is we elect two members from each ward and one is elected every year. The men that we elect to office have a grasp on the public affairs and they can take up the work, and I don't think it would make much difference to us.

Mr. Thomas: Do you elect your board of waterworks trustees?

Mr. Collins: They are elected by the people, one each year.

Mr. Thomas: If this board of public service was to take the place of that board, what is your judgment as to whether it would give better service if the board had some experienced members all the while, that is simply to elect one each year so that you would have two experienced members on the board all the time?

Mr. Collins: It would all depend on the men you would elect to the offices. You might have one man serve ten years and you might have another man who has only served a month or two and his practicality would be as much as the man who was there ten years. The presumption would be in favor of the man who has been there longest in office, because he is supposed to know his business better. It is only a theory though, and not a practical problem.

I believe that the interests of the people would be best served if you could provide for the election of solicitors by the people. We all know in a little neighborhood if an incompetent man is put up for office the people find it out. The people determine whether or not he is fit and if he is not fit, he does not get the election. In a bigger community, probably in the big cities, it might be different, but not in our community. These questions are solved best by the people. In the big cities we have not any reason to complain. We have a long line of illustrious men who have served by election direct from the people as corporation counsel of Cincinnati. We have not a blot or a blemish on the record of any man who has held that office. We are proud to feel that President Hayes, once governor of this state, was elected by the people as city solicitor of Cincinnati, and we have a number of high-class men who have filled that office and who have gone out of office into the actual practice and made records for themselves and been advanced to positions of dignity, and there is no reason down our way to complain about that system. The only reason I heard advanced was the other day, was some one suggested that they might get better men. I don't see any reason to complain.

I don't know how our people feel about the competency of their solicitor, but I am speaking of our clerk.

Mr. Price: Norwood is a suburb of Cincinnati, practically, isn't it?

Mr. Collins: Norwood is in Hamilton county, but not contiguous to Cincinnati.

Mr. Price: They practically call it a suburb. The great body of the people are well-to-do, isn't that right?

Mr. Collins: Yes, sir. We have no very rich people and we have no very poor people.

Mr. Price: They nearly all own their own homes?

Mr. Collins: Yes, sir.

Mr. Price: The make-up of the people there is not as varied in character as an ordinary village out in the country, is it?

Mr. Collins: We have working men and we have prosperous business men. We have no very enormously rich people and we have no very poor people.

Mr. Price: But it is considered one of the good residence suburbs of Cincinnati, as the term is ordinarily used?

Mr. Collins: I should say so, yes, sir. If you let the law stand as it is we are perfectly satisfied and we see no reason for a change, but you are required and called together to pass an entirely new code and unless you seriously change what is proposed in this code, there is nothing more that we care to interest ourselves in, as far as Norwood is concerned, with reference to the officers.

The police court was a question that was discussed this morning. We have not very much interest in that. We have two justices who act in Norwood. They are not particularly anxious for the police judgeship. The mayor has authority and he has shoved that off on to somebody else. Our community does not have many cases to come before police court. I don't believe our police judge makes over \$75.00 a year out of his office, including all his fees, so that as a matter of fact that does not require the election of a police judge, but if we have to elect a police judge our council will fix the salary commensurate with the amount of work he is called upon to perform.

We also have got a village clerk, a man whose records are kept like copper plate, whose grasp of information and detail work required of him is so perfect that we have never lost a case because of the irregularity

of any of our proceedings, and we would like to have that man clerk of our council. I know there is no council the people would ever elect in Norwood that would elect anyone else, and we certainly need the man for our city auditor. If we combine those offices it would be an advantage to every small municipality.

Turning to the general powers of corporations, there has been no change that I can see with reference to section 1692, under which the general powers are granted to village councils; and there are one or two little additions that very easily could be made to this bill which would add to its usefulness. In section 7, line 119, council is given the power to regulate the erection of buildings, fences and other structures, and I would suggest the insertion there of the word "bill-boards." That is a problem that is interesting a great many people. I have found out that in Chicago they have a bill-board ordinance. I was fortunate enough to get a copy of that ordinance and drew one so that it would fit the present law, section 1692, and we enforce that law in Norwood. If you more specifically set out in the statutes the requirement that council can regulate bill-boards, it will be of great benefit to the people, I think. If you read this section further you will find there no provision authorizing the council to issue building permits. The power to issue building permits is only an inferential power, and, as I will state to you further along on the question of assessments, we want an express grant in the statute. So that I would suggest that you amend this section to read as follows: "To regulate the erection of buildings, fences, bill boards and other structures within the corporate limits and to issue permits therefor."

There is another serious thing in regard to that which probably you have overlooked, and I did not have my attention called to it until the other day. This year we discovered that a large amount of improved property in Norwood was not upon the tax duplicate and we commenced to investigate and found that a large number of those buildings were erected in the last year or two. If you have authority granted to the council to issue building permits the village has a record which would furnish direct information to the different assessors of every new building that had been erected in the past year. Mr. Swayne and Mr. Moulinier last night and others have covered other general powers, and we have to deal now with the special powers that are granted in this code.

First is the appropriation of property for public purposes. I don't believe there is anything I want to add to what Mr. Moulinier said, except in the line of a suggestion made to me last evening that we ought

to have some little more definite enactment with reference to section 11 on page 9, line 218. You could add to that what property the corporation can acquire. That would be for waterworks, for sewage disposal stations; and you could make it more specific.

Mr Thomas: Isn't that in there?

Mr. Collins: It is not in there.

Mr. Thomas: "For any of the purposes named in the preceding section."

Mr. Collins: Mr. Swayne spoke of that this morning. I simply want to follow up what he said. The second power is to lease and sell public property. That is sufficient, we think for any and all purposes. To regulate the use of streets. That deals with a question I don't care to touch at all, and that is the question of public franchises. Where any franchise has been asked from the authorities of Norwood, it has been proven to us to be for the interest of the people; and whatever the law is that you enact we will be satisfied and we will carry that law out so far as it devolves upon the officers who direct the affairs of the corporation.

The next item is section 4, to levy and collect taxes. You provide that there shall be a limitation of 10 mills. That is sufficient for the purposes of our corporation. You also give us authority to levy taxes beyond 10 mills, providing the people have votes for bonds and that money is to be used to pay those bonds and the interest that accrues thereon. In that regard while we have made great and expensive improvements in Norwood, we are keeping within the limits and I indorse the 10 mill proposition.

Mr. Cole: What is the rate of taxation in the town now?

Mr. Collins: There are two townships. The township line runs right through the town. On one side we have Mill Creek township and the other Columbia township. In Columbia township the rate of taxation is a trifle over three cents and in Mill Creek township it is a trifle under three cents. That is divided in this way: The schools of our town require 10 mills, the state, county, township and other levies require some nine mills or eight and a fraction, and our village levy is about 11½ mills, and we have been enabled to run along well on that basis of taxation; but 6½ mills is for the purpose of providing a fund for the payment of the public debt and the interest on the public debt; so that when you analyze our tax levy, after all, we don't levy more than about five mills, and that five mills up to the present time has, by the practice of strict

economy, been sufficient for any and all purposes, so that we are satisfied with that section with regard to taxation.

Mr. Cole: Have you a sinking fund in your town?

Mr. Collins: We provide a small sinking fund, but we are practical in our town, and as the city of Cincinnati so generously expresses the desire to annex Norwood to Cincinnati, and knowing if they annex us they will have to take care of our public debt, we have not the great emergency for a sinking fund that we otherwise would have.

The Chairman: What is your tax duplicate in Norwood?

Mr. Collins: Our tax duplicate now is about \$4,300,000. Coming down to the fifth subdivision of the special powers, we come to section 48, which has to deal with the levy of special assessments, and on that matter I want to take a little more time and go into it as fully as I can, for to us there is nothing in the code that is so important to our welfare as the retention, if possible, of the existing laws that easily could be made general with reference to special assessments.

Our village of Norwood has grown because we have exercised the powers vested in us by the statutes and have made extensive improvements, and to pay for those improvements have assessed the abutting property. We are building up to-day faster than ever before in our history and we believe that by the time the next census rolls around our population will be at least 20,000. That has all been done because of the fact that we have had the right to levy special assessments for streets, sidewalks and sewers. We have provided a better improvement of streets and sidewalks and the best sewerage system that you find in southern Ohio and we fear that anything you will do to the existing laws with reference to assessments will seriously hamper not only the collection of assessments that are now due and payable in annual installments, but will tie us up and prevent us making any future improvements.

What I fear with reference to section 48 is that although Mr. Ellis has gone very fully into the question and worked the matter up admirably in this code, still that section lacks the definiteness that the courts of this state require when these assessments come before them to be sustained or enjoined. The Supreme Court have held in 45 Ohio State, page 118, known as the Ravenna case, that the powers of a municipal corporation in its public capacity are only those that are granted and such as may be implied because essential to carry out the express grant. In other words the courts have required municipal corporations to exercise only those powers that are found in the statutes and you can not infer

a power that is not there, because the presumption, as Judge Spear who handed down that decision said, is that the state has granted in clear and unmistakable terms all it has desired to grant and doubtful claims are resolved against the corporation. As the law is to-day with reference to special assessments the statutes are clear and plain. All the steps are laid down in the statutes and when a bond buyer goes to bid for bonds he goes to the clerk and gets a transcript of the proceedings leading up to the improvement, and he turns that over to his attorney who compares it with the statutes and finds that every letter of the statute has been complied with, and the result is the bonds have a market value and bring a good premium.

The assessment laws of this state to-day cover 124 pages of the statutes. The proposed Nash code boils all that down to a page and a half or two pages, and when that is set up in cold type in the statutes there will be less than a page. We fear that because it is not definite enough to carry out the purposes which are intended.

Mr. Price: What would you suggest?

Mr. Collins: I would suggest that we re-enact the old laws. I would suggest that we begin by taking up the establishment of the grade. There is a general law having uniform operation throughout the state, known as section 2301. In the code last year all the assessment laws were re-enacted generally to cover generally every city in the state. The only difference that code makes is that it provides only one way of assessment and that is for benefits pure and simple. We can begin by providing these different steps, making them positive in the law, and when you have done that when anybody brings an injunction suit all you have to do is to show the court that the law authorizing the corporation to do the very thing complained of has been carried out to the letter. You can not assume that all these powers are granted, because the Ravenna case does not allow you to infer that certain powers are granted. These powers ought to be expressly set out.

The only question in regard to the assessment law that is different in some part of the state than in others is the amount that is to be levied on the respective properties and the question whether or not any improvement can be made upon a petition of the property owners. We have a section of the statutes which provides that where three-fourths of the property owners petition for an improvement council can make that improvement and assess the cost on the abutting property and there shall be no limitation so far as those who petition is concerned with reference to

the assessment, but those who do not petition, of course, have the benefit of the 25 per cent. statute.

This code is indefinite in this section and it further provides that in no case shall there be levied on any lot or parcel of land in a corporation any assessment for any and all purposes for a period of five years exceeding 25 per cent. of the taxable value thereof. That has never been the rule in Hamilton county or in the large cities of this state. It has only been in force in the small cities. I have an estimate from our engineer showing the cost of improvements and it would be impossible to carry out any improvements if this is enacted. He says the approximate assessments for street, sewer and sidewalk improvements are as follows: Street improvement \$2.50 per foot front; sidewalk improvement under the Richardson law \$.50; for sanitary sewers \$1.00, making in all \$4.00 a foot. If you make the rule of 25 per cent. of the taxable value as proposed here, all those improvements we could not make any more improvements, because the tax values of our lots throughout the village are about \$400 and no assessment could be levied on a 50 foot lot amounting to over \$100, while this estimate would provide an assessment of \$200. We could not put it on the duplicate of the corporation, because we are heavily taxed now; so that that would be absolutely fatal to our town and to every village in Hamilton county. We would like to have you make the rule as we have it to-day, 25 per cent. of the actual value of the lots and lands and leave out any reference to the buildings that are on that lot. That will make an equitable rule of assessment which will fall on everybody equally and which will carry out just what we have now.

There is another proposition very serious to us, and that is the question of sanitary sewers. There is no provision made for a sewerage system in the corporation at all in this section of the code. When we started to establish sanitary sewers in Norwood the engineer prepared under the direction of council a general plan of the sewerage of the entire village. That plan provided for the sewerage of every lot in the corporation and from time to time we have built that system according to that plan by districts and not by streets, and we have levied an assessment in proportion to the number of feet, in the ratio of the entire number of feet to the total cost of the improvement, an average of so much per foot, and that has been assessed on the property in all the sewer district, no reference being made to property value. The amount assessed was very small and in that way we made at one time a complete sewer.

We have only now to solve one more important question, and that is the question of outlet. This morning I saw Dr. Probst of the State Board of Health, who is urging us to do something in the matter. Five or six corporations are turning their sewage into one creek and unless we have the present law that allows corporations to join together we can not do anything to abate that nuisance. As the law stands to-day all the corporations who are using that creek can be forced to combine in one big trunk sewer and in that way carry it away to some place where it will not do anybody any harm. We could have a general sewage disposal station or settling tanks and chemical precipitation or other methods that are provided for disposing of sewage as it goes down through the pipes.

As I say, this section in a page and a half does not cover the subject, it can not cover 124 pages of statutes. If these laws were not necessary, why were they enacted? They have been in force, some of them, for 50 years in this state. Why do away with those laws that have become the foundation of the right to make assessments? They have been construed time and time again by the courts. The opinions of 50 years are of great value to us in that regard. Why take some other way, why make your laws so loose, I might say, that every assessment would be in jeopardy? It would throw these cases into the courts and it would subject us to a judicial review that would be fatal to a great many assessment cases. Technical points would be raised that would not be covered by the statutes and we could not have any defense, we could not protect ourselves. This code does not provide the number of installments you might levy, it does not provide for the establishment of a grade, it does not provide for plans and specifications, no provisions are made with reference to the necessary steps required by law as in the present code.

The statute 2284 further provides exactly the different items that shall go in. There is not a thing in this governor's code which provides the extent of the improvement. If council get hard up they might put in some of the salaries of the officers and pay them in that way and then assess it upon the property. They can do anything in that way, because they have unlimited power and the statute does not fix what shall go in as part of the cost. There is no provision for issuing bonds in anticipation of the collections. Mr. Ellis says that is given by the general power. That is true, but when you issue bonds you have to find a market for them and unless the law is clear and certain you will not be able to sell the bonds, and what good will it do you to issue the bonds if you can not sell them?

There is no provision made with reference to sidewalks, not a single provision. There are many other objections, but I have taken up a good deal of your time and I simply want to say I want to cover all these questions by an amendment and I want to submit that to your committee for your action. If your committee does not want to pass it of course that is your prerogative, but we are in great danger, we are in serious difficulty if this section goes through and we fear the results; and it is for that reason that I have been very watchful of the different items of this code to see that we are protected in those things that are of vital importance to us.

Mr. Willis: For a municipality the size of yours do you prefer the city form or the village form of government as outlined in the code?

Mr. Collins: The people of Norwood are very anxious to make Norwood a city, but if you are afraid that the city form of government would be cumbersome we can get along as a village, though we would like the title of city. I don't believe it makes much difference under the proposed new code, because the general powers are the same.

Mr. Willis: I understand you think under the new code the government would not be any more expensive?

Mr. Collins: I don't think so. It leaves the council the right to fix salaries and I don't think they are going to abuse that power in our community. We have got confidence in our council.

Mr. Hypes: I would like to ask if in your opinion the powers of the city solicitor under this act extend to those of police prosecutor—if they can be handled in harmony?

Mr. Collins: I don't think it would be very troublesome in our community to have the solicitor do that work.

Mr. Bracken: Do you think a \$500 limit is low enough in the purchase of supplies without advertising?

Mr. Collins: I think so, because very often in purchasing supplies an emergency arises and it is a waste of time to advertise. The statute 2303 provides for no advertising under \$500, and I think that is all right. I believe up to a certain amount it is two weeks and then four weeks that councils are required to advertise.

Mr. Bracken: You said you were not concerned about franchises and also that your city was growing very rapidly. Do you mean to say that you are not concerned in those valuable streets you are putting down?

Mr. Collins: I don't want to be understood that way. I say we are not asking for any changes to be made in the franchise law. We expect the legislature to solve that problem without our assistance. We have, of course, street car companies that want to come through our town and if they come through our town they would benefit us, because they carry people to the city. We have telephones, gas companies, we have our own electric light plant and we furnish our people under municipal ownership with electric light.

Mr. Silberberg: What is your opinion as to this clause here: "The solicitor shall be an elector of the city and admitted to practice law in the courts of Ohio." Would you approve of the condition that he is to be a practicing attorney for five years?

Mr. Collins: I don't think that makes very much difference.

Mr. Silberberg: You might pick up a man who has just been admitted to the bar. He might be incompetent to fill a position of that kind. He should have experience.

Mr. Collins: That is very true. If you elect him by the people you wont run that danger.

Mr. Silberberg: It is appointive, not elective.

Mr. Collins: That would be a fair idea, but we have some young men in the smaller places—I have in mind some villages in Hamilton county—who have not practiced that long but who are filling the offices well.

Mr. Silberberg: We provide for solicitors for larger places as well as smaller ones and we ought to have competent people. This, as I understand, allows one to be appointed who has no experience at all. Wouldn't you be in favor of a provisoion of that kind?

Mr. Collins: I don't particularly have any interest in it. My only means of judging the future is by the past, and I don't think the past experience of cities and villages in this state shows any danger at all in that respect.

Mr. Silberberg: We are not trying to build a code for personal purposes but for the community at large.

Mr. Collins: It can be done, though, very well.

Mr. Wm. Dickson, City Solicitor of Martins Ferry: If this bill passes the city of Martins Ferry will have greatness thrust upon it, and not because we want it, and that is the feature that concerns us most. We believe that we would rather be known as a village than as a bank-

rupt, and we believe that if the government of the city as provided in this code is thrust upon us we will not be able to stand the expense.

We have in our city a mayor, marshal, solicitor, treasurer and ten members of council. The city is divided into five wards. There are water works trustees, three cemetery trustees, three members of the electric light board. We believe the proposed law will diminish the number of officers slightly, but the men who serve now give their time without compensation, except the water works trustees who receive \$100 a year, and the electric light trustees who receive \$50 a year. If the board of public service as laid down in this bill does its duty and does it well, you have got to pay them for it, and we want to pay them if we get this form of government.

The question has been raised here, is it possible to say to the different cities you may or may not elect this or that officer. If that is true, that makes this whole question simple, and we can get along very nicely.

I notice that the power given to council conflicts with the power given to the board of public service. The council have control of all the streets. They have the keeping of the streets clean and free from obstructions. That same power is put on to the board of public service and there will be a clash there just as sure as the world.

We don't take any stock in the board system or in the federal plan as you call it. We want our officers to be right up against the people, and we want to elect every man that it is possible to elect. We absolutely change our water works trustees every four years. We absolutely change our electric light trustees every four years. I live in a city where we have changed the mayor of the city six times in twelve years. We believe that the people of Martins Ferry are better able to judge of the service that a man gives than anybody else.

Mr. Thomas: Do you favor frequent elections?

Mr. Dickson: Right here I want to say I am not in favor of turning every member of this board out every three years. I believe in electing one every year. It seems to me none of you gentlemen would want to run a corporation by having a change of the board of directors every three years. When you get a good man in there you want to keep him and it is the same with a city. We earnestly hope there may be some scheme whereby we may combine some of these offices. We have no use for a police judge or police clerk. We have no use for an auditor, because our clerks do all that work. We like the idea of combining the offices of police judge and mayor and making the mayor his

own clerk in villages. So far as villages are concerned the idea of the code suits us just exactly. I am solicitor of Martins Ferry, and I am in favor of the people electing the solicitor. If you are going to have a bi-partizan board we want the Republican members and the Democratic members of that board elected from Democrats and Republicans.

Mr. Thomas: In a case in 42 Ohio State, the court held that every person who was a voter had a right to vote for every person who was running for office. Would you propose to have the Republicans elect the Republican members and the Democrats elect the Democratic members of the board? By that plan two members of the board would not be upon the tickets of each party.

Mr. Dickson: In Pennsylvania they have a non-partizan judiciary, and I think the law says no more than two or three of any one political party may be voted for on that ballot.

Mr. Thomas: The court decided that that would be unconstitutional in Ohio.

Mr. Dickson: I am not familiar with that decision.

Mr. Willis: In your opinion would it be constitutional for the General Assembly to say to one city, You may have a board of public service, and to another you may not?

Mr. Dickson: I think the Legislature has that right. I am not a constitutional lawyer, but while the question has never been fairly put in this state the decisions squint that way to me.

Mr. Willis: I understood you to say the operation of this new code meant perhaps a slight decrease in the number of officers. In view of that statement I am unable to figure out how you arrive at the statement that the new government would be more expensive?

Mr. Dickson: For the reason that so many men now serve without pay, while if the duties of these men were thrust upon one board they would have to give the matter all their attention. Just another thing. We think the dividing line is way down. We don't believe it should be less than fifteen or twenty thousand.

Mr. Cole: In view of the question that there is a doubt as to the constitutionality of the plan you have suggested, would you advise us to have any code the constitutionality of which is questionable and seriously questioned?

Mr. Dickson: This is only temporary. There is only one way to cure this matter and that is by an amendment of the constitution.

Mr. Cole: I hardly think you have answered my question.

Mr. Dickson: I certainly would not advise putting anything into this code that there is any doubt about whatever.

Mr. Cole: And you think there is doubt about the constitutionality of the council being able to establish these offices?

Mr. Dickson: I certainly think there is doubt about it.

Mr. Price: What is the law about the creation of a board of water works? Hasn't the statute provided in the past and now that the board of water works trustees shall be created by ordinance?

Mr. Dickson: Yes, sir; I think the statute provides any city having in course of construction or having provided a water works.

Mr. Price: Did you notice the decision in a case where that question had been before the Supreme Court. The constitutionality was not raised, but had you noticed that the question had gone up against a council repealing an ordinance that they had enacted?

Mr. Dickson: Only in a general way. I am not familiar with the case.

Mr. Price: In my experience I saw a judge enjoin a city council from going ahead and constructing water works without creating a board. That occurred in Athens county, and one of the best judges in the state did it.

Mr. Dickson: Under section 1692 council may appropriate to themselves all the powers in that section, and may under that section organize a board of health.

Mr. Cole. In fact, councils have been exercising that power right along?

Mr. Dickson: Yes, sir. That section has been often enough to the Supreme Court to settle it.

Mr. Stage: Following up the question of Mr. Cole, don't you think there might be some doubt about the issue of any constitutional questions that may go to the Supreme Court, in view of its decisions?

Mr. Dickson: I think so.

Mr. Hi. Davis, Police Prosecutor of Cleveland: Mr. Chairman and Gentlemen of the Committee: I am here as a representative from the police prosecutor's office of Cleveland. In the cities of the state there is a difference as to the manner of providing for city prosecutors. In Cleveland we elect a city prosecutor under the federal plan, and in our judgment I may say we think that is the best plan that is in existence, and I wish we could convince all you members of the Legislature that the federal plan is the plan of government for cities and villages, even

the smallest village. Under that plan Cleveland has prospered and is prospering. It is the best form of government, I believe, that we can find. We are close to the people in our form of government, and that is the only kind. Let the people have a voice, and the people of Cleveland want a voice in the election of city prosecutor. We have a prosecutor and three assistants. In Toledo, the third city in the state, they elect a prosecutor, and they are satisfied with the plan. In Cincinnati they have a prosecutor who is appointed by the mayor. It is not an uncommon thing in the city of Cincinnati to find a representative of the corporation counsel's office defending a man whom the police prosecutor is prosecuting. What do you think of that in a great city like our sister city of Cincinnati?

Under the plan proposed of appointing a city prosecutor you will find that condition in every city of the state. While Mr. Stage was acting as police judge in our city a week or so ago, a member from the law department of the city of Cleveland, filled by appointment under our present plan, appeared in our court, he was defending the man that I prosecuted. Under the plan proposed of the appointment of the city solicitor there is no way to prevent it.

If you talk about machine building, there is no way like the one proposed in this code. Take, for instance, our own city. The director of law appoints four assistants. In the police court there is a prosecutor and three assistants. If we had a solicitor by appointment made by the mayor as provided in this code, that solicitor would have in Cleveland eight appointees, and if he wanted to be corrupt he could build a machine that could not be broken. With the law department and the police court he could build a machine. Suppose the mayor of our city wanted to build a machine along with his police court. In Cleveland last year we tried over 19,000 cases in our police court. If the mayor wanted to build a machine he could permit gambling to be tolerated in all sections of the city. He could do anything that he might please with that kind of machine. It seems to me that is a dangerous thing to do.

Now, you will say what is the remedy? It seems to me that this is a serious question for every city of this state, and I come to you, I believe, representing the wishes of Cuyahoga county, and I believe our members and senators will be in favor of electing the prosecutor in Cleveland. I don't believe there is an individual who is opposed to the plan of selecting a prosecutor by election, regardless of politics, and we all

know that we have more politics than all the rest of the state combined nowadays; but on this proposition we agree. I believe that what is good for the city of Cleveland will be good for any city in the state. Let us keep out of our great cities the danger of building up a machine.

Mr. Cole: As you say, you advocate the federal plan of government. Then why do you insist upon the election of those who shall have charge of the department of law?

Mr. Davis: Because that is a part of the federal plan in our city.

Mr. Cole: Then you have not got the federal plan there?

Mr. Davis: We think we have got the original federal plan.

Mr. Cole: You have a modified form of it?

Mr. Davis: When I speak of the federal plan I am speaking of it in the strict sense and not in the general sense.

Mr. Cole: As you have it in Cleveland?

Mr. Davis: As we have it in Cleveland, and as we have already got it. I believe in the federal plan and in the merit system.

Mr. Cole: It seems to me your advocacy of the election of all these officers and of the federal plan at the same time is inconsistent.

Mr. Davis: The federal plan destroys corruption in our judgment, and to appoint a prosecutor by persons who hold office means corruption.

Mr. Williams: If the city prosecutor is appointed by the mayor and the members of the corporation counsel's office, an entirely different department, are entitled to practice, what would be the objection to their defending cases in the police court?

Mr. Davis: If it was honestly done I presume there would be no objection to it.

Mr. Williams: The member from the corporation counsel's office would not be acting in his public capacity. It strikes me if a member of the corporation counsel's office was entitled to practice there would be nothing to prevent him defending a man in his private capacity.

Mr. Davis: I can not see how you can say that a member of the law department might prosecute a man and another member defend him and make it consistent.

Mr. Price: Couldn't that be managed by a provision in the law that they should not appear in any case in which the city was prosecuting or defending?

Mr. Davis: You might provide for that. There is no provision now to prevent that condition of affairs existing.

Mr. E. P. Matthews, City Solicitor of Dayton: Mr. Chairman and Gentlemen of the Committee: We have in Dayton a board of city affairs which answers very largely to the board of public service provided for in the code bill. This board is bi-partizan, appointed by the mayor, subject to confirmation by council. We have a board of police directors numbering four, which is bi-partizan and appointed by the tax commission. We have a workhouse board, which is a bi-partizan board of four appointed by the mayor, subject to confirmation by the council. We have a tax commission which is a bi-partizan board appointed by the mayor without being submitted to the council. We have a bi-partizan park commission of four which is appointed by the judges of the Court of Common Pleas of the county. We have a waterworks board of three which is elected by the people, and a city infirmary board of three which is elected by the people.

Mr. Price: How is your waterworks board created, by special act?

Mr. Matthews: No, sir; it is under the general statutes of the state created in 1870, I think.

Mr. Price: It was created then, by ordinance?

Mr. Matthews: By ordinance. I am willing to admit we have got more boards in Dayton than we ought to have, but I also think it would be well with us if all the claims against the city were audited and paid through one office. That is not the fact now. I think it is a great safeguard for the public to have all bills paid through one office and by one officer; and I also think it is a great safeguard for the bills to be audited in a public way. If bills can be audited and paid secretly I don't see why a couple of officers could not steal everything there is in the treasury if they are inclined to do it. That can not happen where the proceedings are public.

We are in favor in Dayton of the plan we have. It is similar in a good many respects to the plan under which they operate in Cincinnati. They elect their board there; we appoint ours. Our city is run economically, our finances are in good condition. The board of city affairs acts as the sinking fund trustees. The small issue of bonds are taken for the sinking fund when we levy special assessments, which bear six per cent. interest. I believe in a bi-partizan board, I believe that it promotes the stability of the city government. This board with us is appointed, one member each year. There is no provision in the code for any appointments to be submitted to the council, for the reason that they

wish that the council should not have executive power, they want to keep the legislative and executive departments entirely distinct.

Mr. Cole: Are the appointments on your police board submitted to council?

Mr. Matthews: They are not, but I think they ought to be. There has been no difficulty with the police board of Dayton, but I think the appointments ought to be submitted to council. I have got a good deal of faith in city councils, and the council is a good deal of a safety device for city government. They come very close to the people.

Mr. Thomas: Do your board of public affairs let the contracts?

Mr. Matthews: Yes, sir.

Mr. Thomas: Does that result in any conflict between the board and the council?

Mr. Matthews: No, sir. There have been times when there have been conflicts between the board and council, but not over matters of that kind. They usually come over granting franchises.

Mr. Thomas: In making a street improvement or any other improvement, is a contract first recommended to council by the board of public improvements, and is then an ordinance passed authorizing it?

Mr. Matthews: It is, under the law as we have it. The board can not proceed with an improvement until authorized by council.

Mr. Thomas: If the board lets a contract must it be reported to council and confirmed before the improvement is made?

Mr. Matthews: No; they go ahead. We operate under a special street paving law and the assessment is made by the board of city affairs. The council passes the assessing ordinance.

Mr. Thomas: Do the board for that purpose pass an ordinance assessing or simply make the assessment under a general ordinance of the city providing for assessments?

Mr. Matthews: In our street paving law it is provided that the board of city affairs shall have prepared a schedule of the names of the property owners and also a plat of the property abutting the improvement, and then the assessment is made by the front foot and certified to the county auditor.

Mr. Thomas: That is done by ordinance, isn't it?

Mr. Matthews: No. I think all things of that kind ought to go through the council.

Mr. Cole: In other words, the board exercises legislative powers?

Mr. Matthews: It does so far as making the assessment is concerned.

Mr. Thomas: You think that ought not to be done?

Mr. Matthews: I think the council ought to do those things. As to the appointment of certain officers, both the solicitor of Dayton and the prosecutor of the police court are appointed. The city solicitor is appointed by the board of city affairs, as is also the city civil engineer and also the city controller and the various persons who serve in those offices. The prosecutor of the police court is appointed by the board of police directors. There has never been any conflict between myself or predecessors and any of the prosecutors. We work together very harmoniously. Personally, I think that the solicitor ought not to be hampered by a campaign before the people. I believe it is better for him to be appointed.

I would like to see this bill changed so as to make a bi-partizan board of public service and to make it appointive, and I believe the reasons for making this board appointive are as strong as they are for appointing a board of public safety. I don't believe a man who does his duty on that board can ever be re-elected to the office. He is bound to incur unpopularity.

Mr. Cole: Have the board of public safety authority to employ superintendents and establish sub-officers without submitting it to the council?

Mr. Matthews: Yes.

Mr. Cole: Isn't that a legislative duty, and shouldn't that go to the council?

Mr. Matthews: They have charge of the streets and employ the laborers that work in different capacities. They appoint a clerk in my office, for instance, and in some of the other offices. They appoint assistants, clerks and rodmen in the engineer's office.

Mr. Cole: There is no restraint or check of any kind upon the powers exercised by that board?

Mr. Matthews: No; we don't need it.

Mr. Cole: Isn't the establishment of these offices a matter that should be done by ordinance?

Mr. Matthews: It might be done that way.

Mr. Cole: Isn't that really a legislative power?

Mr. Matthews: I hardly see why the appointment of clerks should go before the council any more than the employment of laborers upon the streets.

Mr. Price: Isn't it a delegation of legislative power?

Mr. Matthews: I think that is administrative power. I was very much interested in listening to the solicitor from Norwood on the subject of assessments. There is a great deal of sentiment that he expresses that I would not. I don't think it safe for the cities of this state to throw down this system of assessments that has grown up in the last thirty years or forty years, which are dictated by experience and have been passed upon by the courts and are well understood by the people who are working under them, and undertake to embody all that amount of law in a page and a half. The gentlemen from the smaller cities might not appreciate that as much as those from the larger towns do.

In that connection I want to call attention to the fact that one line 715 of the code, in section 65, sinking fund trustees are required to certify to council the rate of tax necessary to provide a sinking fund for the future payment of bonds issued by the corporation and for the payment of judgments final, except in condemnation of property cases. Evidently whoever drew that had in his mind that the cost of property taken for street improvements was to be especially assessed upon property in the neighborhood and abutting that was specially assessed upon property in the neighborhood and abutting that was specially improved and benefited by the opening of the street. You can not do that. I do not see how under the rulings of the Supreme Court you can make a statute authorizing a special assessment in condemnation cases.

The gentleman from Norwood spoke about section 2284 of the Revised Statutes as they are now, in which the law specifies what are the costs of an improvement which are to be specially assessed, and he thought if you took that section out council might do a great many things that were not proper. They might, but I think the much more serious danger is the court before whom the assessment is contended will cut out a whole lot of things in the assessments that ought to go in, such as the cost of preliminary surveys, the cost of advertising and things of that kind.

I notice another thing. On line 580 it says: "The municipality shall bear not less than 5 per cent. of the charges and expenditures referred to herein to cover the cost of street intersections and the proportion of general benefit to the corporation." Under the present law the corpora-

tion must bear one-fiftieth. I do not see why it does not include sidewalks as well as everything else. If that is the intention, well and good, but the law ought not to be passed with this clause in. It seems to me that two per cent. is enough for a city to be called upon to pay for improvements of this kind.

The Chairman: Would two per cent. be enough to cover intersections?

Mr. Mathews: No, and I don't think five per cent. would, certainly not where the streets are as wide as ours, but the law authorizes the city to pay for street intersections, except the part which has built upon it a street railroad. They say the street railroads shall pay for substantially a strip seven feet wide. As a municipal officer I am opposed to the revision of the assessment laws contained in this bill. As a member of the bar I am in favor of them.

Mr. Willis: During the hearings on this bill a great deal has been said about a conflict between sections 28 and 93 as to the control of streets. In view of your experience I would like your opinion on that matter.

Mr. Matthews: We have never had any trouble of that kind. I have never had the question raised on me once. We had it raised in an electrolysis case that we tried last fall, counsel for the street railroad claiming the board of city affairs and the council should both have taken action in ordering certain changes in their electrical appliances, and the city council never had ordered it. The court looked upon that as rather a legislative act and did not give any weight to the contention of counsel for the defendant.

Mr. Thomas: Do you think from a reading of section 93 that it confers any legislative powers upon the board of public service?

Mr. Matthews: I don't believe in a bill of this kind, it will be so held, because it was evidently the intention of the legislative and executive powers should be divorced.

Mr. Thomas: Do you think that is simply an administrative power that is conferred there?

Mr. Matthews: I think it would be so held.

Mr. Denman: Referring to section 65, line 715, in a talk with Mr. Ellis I know the gentleman contemplated that we could raise money to cover the expense of taking property by assessment back; so that I think it here simply means to say it shall not be raised and put in the sinking

fund for that purpose. If that is true, how would you suggest that money be raised?

Mr. Matthews: It is to be raised by general taxation.

Mr. Denman: Would not that be covered, then, by section 37 on page 18?

Mr. Matthews: And I might suggest sometimes it might be to the interest of the municipality and almost necessary where they open a street to issue bonds. If they issue bonds, certainly they could not levy a tax to redeem those bonds under this section, and the cities are going to find they have a lot of bonds now outstanding in condemnation cases that will be contested and they will not have any way to pay them if a clause of that kind is left in.

Mr. Denman: I wanted to know what your opinion was of section 37, whether that would cover it and be sufficient?

Mr. Matthews: I don't believe it would, no, sir. I think that power to levy taxes to pay for land taken in condemnation cases ought to be specifically given.

Mr. Denman: What is your idea as to the rotation in office of all the officers of the city, and especially the council?

Mr. Matthews: I think council ought to rotate in office.

Mr. Stage: Supposing it is necessary that under the provision of the Constitution, the legislature shall provide for the organization of cities, and the legislature having delegated to municipalities all the powers necessary for the purpose of municipal functions, do you believe that there is any constitutional objection to the council then by ordinance providing for the administration of those powers in any way that they may deem wise?

Mr. Matthews: My notion has been that the policy of the constitution of this state was there should be some kind of uniformity in the different city governments. If the councils of each city could outline their own government, you would probably have as many different kinds as there are cities and villages in the state.

Mr. Stage: Administering the same powers, but in a different way?

Mr. Matthews: If they administered them in a different way it would make them substantially a different way of doing it.

Mr. Hypes: Under the provisions of your form of government has the mayor the power of removing any officer?

Mr. Matthews: He has not of the board of city affairs. He has only such powers of removal as are given him under the general powers

of the state. The council has the power to remove officers who are found unfaithful and inefficient. It requires a two-thirds vote.

Mr. Price: Suppose the legislature would give council the power to establish a board of public service by ordinance, saying the number should not be fewer than three nor more than five. What do you think of that?

Mr. Matthews: I am not altogether clear about that. The waterworks boards are provided in that way; the infirmary boards have been.

Mr. Price: Do you know of any case in your experience in looking through the statutes where the power was clearly conferred on council to create a board by ordinance, or to create an office, where it has been declared unconstitutional under our present constitution?

Mr. Matthews: No, sir. I know our board of waterworks has never been questioned. It has been in existence since 1870, about.

Mr. Price: Have you seen the recent decisions of the Supreme Court affecting these municipalities?

Mr. Matthews: I have read all that have been published so far.

Mr. Price: Do you find anything in them of that sort?

Mr. Matthews: I don't recall that I do.

Mr. Price: What constitutes the organization of a corporation?

Mr. Matthews: I suppose the principal officers necessary, at least, to run the corporation ought to be provided for by statute, but just how far they go or where they may be stopped I have not considered the matter at all.

Mr. Price: Suppose there was a council and mayor provided, as has been done in another section of the constitution, and then power given in clear and express terms to do a thing, can the corporation do it?

Mr. Matthews: I am not prepared to say that that would not be constitutional. It comes very close to the way in which the waterworks boards have been provided for.

Mr. Price: Would you consider a corporation organized—not saying organized to the fullest extent that might be—but would you consider a corporation organized if the legislature provided a mayor and a council, leaving the police judge out?

Mr. Matthews: I can not help feeling it would be better for the legislature to outline what should be done in each one of those municipalities than leaving it all to the council.

Mr. E. S. Willis, City Solicitor of Wellston: Mr. Chairman and Gentlemen of the Committee: As has been suggested here by the gentle-

man from St. Marys, I think the proposed code is too expensive for the small cities. We have a population of 8,000 probably 10,000 now. It was 8,000 in 1900, and it has grown since that time. The city owns its electric light plant, also the waterworks. We think that this code might dispense with the president of council. I am in favor of the council selecting its own president. If he is an officer he has to be paid and since he takes upon himself the duties of mayor, or the law thrusts those duties upon him in the absence of the mayor, he ought to receive a salary. It would suit the people of Wellston better to have a person selected by the council. It has been suggested to me that as he takes the place of the mayor in case of his death or resignation that therefore he should be elected by all the people. The code provides that three members shall be elected at large and it might also provide that one of those members should be selected as president of the council. That is our position on that question. There we might cut down the expense three or four hundred dollars.

We are also opposed to a change of the entire administration at the same time. So far as Wellston is concerned we don't need any board of public safety. We do need a police court. The members of the board of public service would have to be paid a good salary. If you give them the care and control of all the public improvements and the work of the board of health, and if they are also to take the place of the cemetery trustees, we would have to pay salaries to three men sufficient to justify them giving at least two-thirds of their time to that business.

I am in favor of the election of the solicitor by the people. I would rather be responsible to the people for what I do as solicitor than to any one man, and our people favor the election of the solicitor.

I don't quite understand sections 28 and 93 of the proposed code. One provides the council shall have supervision of the streets and the other that the board of public service shall have supervision of the streets. If that section 93 is administrative, there is probably no danger of any serious conflict, but so far as Wellston is concerned we believe that it would be better for the council to have control of the streets and that that provision giving authority to the board of public service should be eliminated from the code. I can not see any necessity for a board of public safety, though there might be in large cities.

Section 78, line 842, provides that "No ordinance or resolution granting a franchise or creating a right, or involving the expenditure of money, or the levying of any tax, or for the purchase, lease, sale or transfer

of property, shall be passed, unless the same shall have been read on three different days, and with respect to any such ordinance or resolution there shall be no authority to dispense with this rule." In connection with that sections is another section that provides that in the case of an expenditure of more than \$500 it must be let by contract and advertised for a certain length of time. That is objectionable unless there is a clause provided giving the council the right to act in case of an emergency.

I think in Wellston the mayor could do the work of police judge, though I don't believe under the code it would be constitutional for the mayor to be the police judge. If the cities are grouped into a judicial district I don't believe the legislature has power to make the mayor a judicial officer. The mayor would be succeeded in case of death by the president of the council. I don't believe that would be constitutional, and we would have to have a police judge.

Mr. Willis: Where do you think the dividing line ought to be between cities and villages?

Mr. Willis: Five thousand. We want to be a city. We have just so much work to do in Wellston and I don't care whether we are called a city or village, that work has to be done.

On motion the committee then took a recess until 7:30 P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

75TH GENERAL ASSEMBLY, EXTRAORDINARY SESSION.

SEPTEMBER 5th, 1902, 7:30 P. M.

Pursuant to recess, the Special Committee on Municipal Codes, of the House of Representatives met in legislative hall, Mr. Willis presiding. The discussion of the code by village and city solicitors and the representatives of the legal departments of municipalities, was continued.

On roll call the following members responded:

Comings,	Denman,
Painter,	Willis (of Hardin),
Guerin,	Gear,
Price,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Allen,	Huffman,
Silberberg,	Sharp,
Worthington,	

Professor Fairlie, of Michigan, was introduced by the chairman and addressed the committee as follows:

Mr. Chairman and Gentlemen of the Committee—I have been announced as having an address to deliver; that presupposes something a good deal more formal than anything I have to say.

I have been studying this question of municipal government now for a number of years, and am still in a position of needing more information, and it was on that ground that I came to Columbus, to hear what was being said before this committee, and particularly I wanted to hear what was being said by the officers of the city governments, and I wanted to get their opinions. I appreciate, therefore, the opportunity that you have given me to state which views and criticisms and suggestions I have to make in reference to the subject now before you.

I think I realize, if not fully, at least partly, the grave difficulty of the question, and perhaps the impossibility of formulating a code that will be satisfactory to all of the different cities. In discussing the various questions, I shall follow the order in the bill that has been introduced, and which has been the basis for most of your discussion here, commonly called the "Governor's code," and as the most of the things I shall say will probably be objections or criticisms of what is in the present bill, I want at this point, at least to state my opinion of the good points of the code. It seems to me that the formulating of such a bill, the having of such a bill already formulated before the legislature came together, in view of the extraordinary situation, was a distinctly notable piece of work. It presents in tangible form a scheme, a definite scheme of government, which I think, undoubtedly gives the committee a better foundation to work upon than it otherwise would have, and I think that, in many respects, the scheme presented and the measures proposed would be distinct improvements. But, as I say, what I have to say here will be more in the way of pointing out some features, in which it seems to me the bill is defective.

Now, the first heading in the bill, the classification of municipalities, it is hardly necessary to say much about. I think I feel with the most of the people who have said anything about this, that the limit of 5,000 is in fact, too small; but I realize, also, the practical considerations which make it necessary to leave it at that figure. I feel that what has been said to-day and yesterday confirm that opinion, that communities of five and ten thousand want a different scheme of organization in regard to certain officials, than what the cities over that limit will have; but I would simply pass my opinion that the limit of ten thousand would be much more satisfactory, unless the villages insist upon having the title of "city" attached to them.

In reference to the powers of municipalities, I have, in my own copy of the bill here, made a number of notations and corrections, all of which I do not think it worth while to mention in detail, but one general point which I wish to make, is, that it seems to me this first part, the general part, of municipalities, might be improved, by rearranging the powers so that they will be presented in the most logical manner. I find, for example, on page 7, the power to open, construct and keep in repair sewers, come in practically with the power to construct canals and license ferries, while the question of disposing of garbage, which one would think would be somewhat related to sewers, is put under

a paragraph to itself. The power to establish public schools, or buildings for public schools, is in the paragraph dealing with markets and market houses; the power to establish public baths comes at the beginning of a long paragraph, the rest of which deals entirely with the question of public libraries. Schools and libraries might go together, and I think baths and markets might go better together than schools and markets.

I notice some cases of duplication; the power to regulate the docks and wharves come in in two places, in paragraph 15, and again in 19. In connection with the power to remove garbage, I notice the provision is made authorizing the city to provide for the disposal of vegetable garbage, dead animals and other animal offal, etc. Now, the question to me, is, whether that would authorize them to remove ashes, which is neither animal or vegetable garbage, that is, it is neither vegetable garbage, or dead animals. These may seem small points, but it does seem to me that a careful classification of the powers of the municipalities would result in giving it to us in a more intelligible manner. Perhaps of more importance, however, in this field of the powers of the municipalities, is the power given in reference to the so-called municipal monopolies. The only provision I find on that point is in paragraph 15, on page 6, which deals almost entirely with the power to provide waterworks, and after some six or seven lines on that subject, adds, "and to establish and maintain municipal lighting and heating plants." Another question in my mind, in view of the power which seems to be necessary to authorize waterworks, is whether that brief sentence is adequate to convey the necessary power to construct municipal lighting and heating plants, and in particular, whether the phrase "municipal lighting and heating plants" means to convey the power to apply and supply light and heat to private consumers, or only the right to supply light and heat for public purposes, and further, whether those words, "lighting and heating plants," might not prevent the city or village, which had electric, or gas works, from establishing or disposing of their electricity or gas for the use of power stations, or for the use of power, generally.

Mr. Price: We have one city in the state that has natural gas for heat and light.

Prof. Fairlie: That would be included in that; but could a city sell gas to a printing office, for instance, which wanted to use gas in the operation of its plant?

Mr. Guerin: I would like to ask a question here, a little out of order—but do you think it would be proper for a municipality to have power to engage in something that was not of the nature of a public enterprise, for instance, furnishing power to private enterprises? It is different from lighting, or heating, or furnishing gas or water?

Prof. Fairlie: If that were the paramount purpose for which the works were established, it would be very doubtful whether the city should be given the right; but if the cities are to have the right, primarily for lighting purposes, it seems to me, if those works are to be carried on in the most economical manner, and to the best advantage, the city should have the right to use those works for all the purposes for which they could be used. And even in connection with the authority to supply water, I think the question has already been raised in some discussions here, as to whether the power would authorize the city to construct water purification works, such as now are being undertaken in certain cities, and will probably be found more necessary as our cities grow, and they have to use water which is more and more polluted; and in the same connection I think there is some dispute as to whether the power to open, construct and keep in repair, sewers, is sufficient.

One further detail in this connection: Section 17 authorizes the cities to provide public cemeteries and crematories for the burial or incineration of the dead, and to regulate the same. That apparently leaves no authority to regulate the use of private cemeteries, which, it seems to me, the city ought to have, in the interest of public health.

I presume the power, or the matter of the state having power to own and operate, or even to own without operating, street railways, has been deliberately omitted; these other points, it seems to me, have been accidentally overlooked.

Mr. Price: How is that?

Prof. Fairlie: I say, I presume that the matter of the city owning or operating street railways, has been deliberately and consciously omitted. I am referring to what seems to me to be an omission in the general subject of powers of the municipality. I do not propose, at this time, to enter into any discussion in favor of municipal ownership, or even to present an argument in favor of cities having the power to own street railways; there is a large difference between the two. The legislature giving the cities the power would not necessarily mean that the cities would thereupon begin to exercise that power; that would be a question for the city authorities to decide.

Mr. Willis: In view of your statement that probably the omission of the provision of municipal ownership is intentional, I will ask you your opinion of line 214,— what is the animus of that?

Prof. Fairlie: I said municipal ownership of street railways,— at least I intended so to say. I have recognized, not only in line 214, but in 134 and 135, that the power was given to authorize the municipal ownership of lighting and heating plants; having some connection with the question of municipal ownership of railways, if not street railways, the question has arisen in my mind as to whether there is anything here that would authorize the city of Cincinnati to maintain its ownership of the Cincinnati Southern railways, and if that authority is conferred in sufficiently general terms, may it not seem strange that cities are given authority to own steam railways, outside the boundaries, and running through different states, when they do not have authority to own railways running through their own streets?

In reference to the special powers, I shall only take up one or two points; first, in reference to the making of the budget. I have been unable to decide for what year the budget which is being made up in May of each year, is to be; whether it is to be for the fiscal year past. The fiscal year is to end on the 31st day of December (Page 21, line 518); the particular statement which seems, at first sight, to define the definite year for which the budget is being prepared, is line 489, that the auditor shall make an estimate, estimating the total percentage he deems necessary to be levied in that year so as to provide sufficient means for all the lawful needs of the corporation for the period named for statement No. 5." I do not precisely know what statement; No. 5 is a statement containing an estimate of the moneys needed to pay for each of the twelve months following, of the current and the succeeding fiscal year. The statements includes a statement for two years; these statements are made in May, but it does not say whether the budget that is being made up is the budget for that four months, which have already elapsed, or whether it is the budget for the year that does not begin for about eight months after that time; and in either case, it seems to me that it ought to refer somewhat nearer to the fiscal year than it does.

Mr. Price: Our tax levy, among other matters, is made up in the spring.

Prof. Fairlie: It is obvious, I think, that the wording does not make clear what year the budget is for.

Mr. Price: Our municipal year ends in the state, I believe, at the time specified here, and our budget each year is made up in the spring time.

Prof. Fairlie: You make up the budget after you have begun your expenditures, or for the eight months before you begin to do that?

Mr. Price: Probably eight months before they begin to use them.

Prof. Fairlie: It seems to me that is rather a long time.

Mr. Comings: I believe the council takes its seat in April, and the assessments are made and the taxes levied the last meeting in May probably.

Prof. Fairlie: It is in May, probably. What I wanted to know, is that the tax for the expense of that year, that current year?

Mr. Comings: For the year to come, from that time until the next May.

Prof. Fairlie: But this provides that the fiscal year is to end on the 31st day of December.

Mr. Price: The budget now is made up in May, and the first taxes that come in under that budget, is the 20th of December, that is, between November, and the time for paying is the 20th of December, and after the 20th of December the county treasurer settles for the municipal and township taxes.

Prof. Fairlie: It may be that the budget year would be identical with the fiscal year; it may be that at the present time your budgets are made up in the spring; they are made for expenditures beginning about the time the budget is made up.

Mr. Price: For the expenditures beginning for the holidays following.

Prof. Fairlie: You make your estimate then eight months before.

Mr. Price: It goes a little further than that. Taxes are collected during November and December; they are levied in the spring, the first half, then the treasurer has a certain time to advertise, and he makes his annual settlement in November, or semi-annual settlement, it is called, with the auditor. Now, that is the first half of the tax. The next half is to be paid entirely by the 20th of June, and somewhere the latter part of August, the annual settlement of the treasurer with the auditor of the county is made; and after the treasurer has settled with the auditor of the county, he makes disbursement, the auditor making it for him, he turning the money over to the corporation and the auditor making the disbursements.

Prof. Fairlie: There still remain, as I see it, two difficulties; the first is, that in section 6 you do not make clear that statement No. 5.

Mr. Price: I will admit that "twelve months following" is not very clear. I was trying to give you the facts.

Prof. Fairlie: And I am obliged. It seems that this is intended to apply to the fiscal year following, whereas, the phrasing here makes it uncertain. The other question is, as to whether that system of making the budget, which does not begin until the succeeding January, in May, is altogether the best system. That means that the outgoing council frames the budget which is in operation for twenty months, at least does not run out for twenty months after it is framed, eight months of the expenditures of which may be under the new council — it seems that the budget ought to come closer to the fiscal year.

The question of special assessments has been discussed a good deal, and I do not propose to take that up at all, in detail; I would simply reiterate one point that has already been made, and that is, that the requirement here that special assessments are to be made by the tax value of the property, works an injustice to the owners of improved property, in a district most of which is unimproved. If a large section is unimproved, and a few people have built houses, the tax value of their property, the whole of their property including the house, is of course, very much less than the tax value of property which is unbuilt on and unimproved — it seems to me that requirement is bound to work an injustice, in special assessments.

Mr. Price: What is your theory about special assessments?

Prof. Fairlie: Well, it seems to me that in special assessments — being usually made for sidewalk and street openings, street paving, usually in a new district not built upon, — that to assess the man who has built his house before the improvement came through, to assess him on the value of his house, where the other people have only to pay on the value of their land, is distinctly unjust.

Mr. Price: What remedy do you propose?

Prof. Fairlie: Either for the assessment to be made on the basis of the frontage, or on the basis of the tax value of the land, excluding the value of the buildings; then that would work some justice to the improved property, because a certain amount of the improvements may not be in the buildings.

Mr. Price: It can be put in more than one way.

Mr. Silberberg: Why would it be unjust? Here is a man who has erected a building, and he derives the benefit from that building, either in living in it himself, or else in renting it.

Prof. Fairlie: It seems to me he is getting no more benefit from the street improvements than the other man. If you take the owners of two adjacent lots, both of which are worth \$400, one man having put up a \$2,000 house on his lot. The street improvement benefits the property of those two men, it seems to me, to the same extent; the one man has not built his house yet, but probably will next year, since the street improvements are put there; then after the second man has built his house, he has secured all the benefit from the street improvement, the paving, sewers, etc., and yet, is paying at the rate of only one-sixth as much as the man who built his house before the improvements were put through.

Mr. Silberberg: When the improvements are made, that increases the value of the vacant lot, doesn't it?

Prof. Fairlie: I would say yes.

Mr. Silberberg: Now then, the land should be alike in value, but the difference should only come in in the way of assessment; what are the improvements worth? What benefit does that man derive from the improvement placed upon that vacant lot? That is all the difference, and that is the only additional tax that the man that has his property improved pays over the one that has it unimproved.

Mr. Gear: I would ask if street improvements and pavements are not always an advantage? Now, should there be any difference in the building of a pavement, in case it is compelled by the order of council,—should there be any difference between the man who has improved property, and the man who has not?

Prof. Fairlie: I think not.

Mr. Gear: In sewers, it would be different, would it not?

Mr. Painter: I want to ask the Professor, if he excepts sanitary sewers: He didn't refer to those at all—those are drainage sewers.

Prof. Fairlie: Just what would be the difference in regard to them, do you think?

Mr. Allen: Well, it seems to me, if assessments are to be made in that way, the vacant lots excused from paying, it would be an inducement for people to hold vacant lots, and allow the assessments to be made on the other property, while all the time the value of the vacant lot is increasing, is enhanced.

Mr. Fairlie: That is the thing I am speaking of, that the vacant lots should be made to pay their full share. These are somewhat disconnected remarks, on points that occur to me as I read through the sections of the bill on the powers of municipalities.

I shall say something now in regard to the organization of the council, a matter, which it seems to me, deserves more attention than seems to have been paid to it hertofore. It certainly will follow under any code that may be enacted here, that your municipal councils are going to be much more important factors in the future than in the past, and it is an important matter to consider the question as to whether the means and method of organization provided, is the best one to make the council thoroughly representative of the citizens. Now, it seems to me, there is one distinct advance made from what has generally been the custom, in the provision that a certain number of the members shall be elected by general ticket; I think that should result in a distinct improvement in the city council; but in the other provisions, there seems to me to be something to object to. I feel that in the city council, the system of partial election and partial renewal of the council should be introduced, or should be continued, if it does exist, as it does in most of our cities at the present time. The council is composed necessarily of men who are not actively engaged in the work of the municipality, men engaged in other business, who are giving only a part of their time to the city, and it must necessarily result that they are not men, when first chosen, who are acquainted, to any large extent, with their duties as members of the city council, and it seems to me, for that reason, important, that there should be in the council a body of men who have had some experience, and that council should not all be elected at one time. The second point that I have reference to, is the provision for re-districting the city into wards every ten years. Under a system of that kind—and indeed, it is probably true of most of the cities and wards we have in our state at the present time—wards are necessarily entirely arbitrary, or artificial districts; they will not represent any section of the city, with any distinct interests, or any distinct social life, or any distinct local opinion; but are purely artificial areas set off because each area contains a certain number of people, and I think it takes very little observation to convince one that in the large cities, contiguity of residence does not necessarily mean that the people are people of common interests, particularly when the contiguous area is the small area of a city block marked off under a rule of equal population. Moreover, if you will turn to a census bulletin

issued about six months ago, showing the population of wards in our cities in this country, you will see that there, in spite of the attempts made to have city wards of comparatively equal population, that result is nowhere attained in any of the large cities, and the population of the wards within one city will vary in the proportion of from one to four, and in some cities even as high as one to six; some wards have six times the population of other wards in the same city. Now, the remedy that seems to suggest itself for that situation, is not, as is advised by some people, a complete abolition of any district representation; I think that would involve other difficulties; it seems to me there is a necessity for the representation of the different localities that exist in our cities; that these different local sections should be permanent areas, or at least should be re-districted only at comparatively rare intervals, and then the boundaries should be fixed, not by any hard or fast rules of getting a district with a certain number of people, but in accordance with the distribution of people and the class of people who are brought together, and we have distinctly common interests and social relations. I think that under that system, the number of wards in our large cities would generally be distinctly fewer, and the population in the wards would then entitle most wards to have a number of representatives, and under that system, it would be possible to apportion representation according to population much more easily than it is under the system here provided, because adjustments could be made even oftener than ten years,—every five years—by assigning a different number of members to these wards, in proportion to the population of each.

Coming now to the question which has been probably more discussed than any other, the organization of the executive or administrative authorities; I want, in the first place, to add something which seems to me at least, to be in favor of those who would leave a considerable discretion to the city council, in regard to the creation of different offices. I confess that I do not pretend to understand fully the influence of the Ohio constitution and its interpretation, but it seems to me that the analogy in this case I shall cite is very distinctly closer. The Illinois constitution adopted in 1871 contains provisions requiring general laws for municipalities or for corporations, in terms almost identical with those in the Ohio constitution. The exact paragraph is that no corporation shall be created by special law, nor its charter extended except under certain provisions. The General Assembly shall provide by general laws for the organization of all corporations hereafter to be created. The

first and last paragraph I think are almost word for word what you have in the Ohio constitution. Under that provision, the Illinois legislature, in 1872, passed a law, a general law, for the government of all the cities in that state, with no attempt at classification; the law applied to every city in the state. They have a separate village law.

Mr. Price: Villages not mentioned?

Prof. Fairlie: No; the constitution does not mention those; it simply says municipal corporations; the provisions I have referred to are from the laws dealing particularly with cities. In reference to executive officers, I wish to say a word. Article 6 of the law dealing with cities deals with the subject of officers, and the first section provides for certain officers to be elected in every city. There shall be elected in every city organization under this act, the following officers, namely, the mayor, city council, city clerk, city attorney and the city treasurer. The next section, however, "The city council may, in its discretion, from time to time, by ordinance passed by the vote of two-thirds of all the aldermen elected, provide for the election by the legal voters of the city, or the appointment by the mayor, with the approval of the city council, for a city collector and city marshal and city superintendent of streets, a corporation counsel, a city comptroller, or any or all of them, and such other officers, as may, by said council, be deemed necessary or expedient." That is on the statute book to-day and has been for thirty years, and has never been disputed, and it is under that provision that the city council of the city of Chicago is operated.

Mr. Painter: I would like to ask a question. It takes it from your statement just now, professor, that you believe we could constitutionally draw up a code here that would make it optional with some of the municipalities of Ohio whether or not they use it?

Prof. Fairlie: Whether or not they create certain officers?

Mr. Painter: Yes, that is what I mean?

Prof. Fairlie: That is my opinion.

Mr. Price: Do you know anything about the constitution of Michigan?

Prof. Fairlie: Yes, the constitution of Michigan has no such restriction at all, and the municipal legislatures of Michigan deal openly and frankly with particular cities.

Mr. Silberberg: You say that was the code of Illinois you just read from?

Prof. Fairlie: Yes.

Mr. Silberberg: Has that ever been decided by the supreme court of the state?

Prof. Fairlie: It has not; but I think the fact that it has stood on the statute books thirty years without being disputed, is a good point in its favor.

Mr. Silberberg: We have had laws for almost thirty years, too, until now, when they have been declared unconstitutional. We are here now to formulate a law, or a bill that shall stand the test. Those provisions you read there are very good, they would suit us, providing they are constitutional. I do not say the same questions; but I say we have laws that have been in existence for years, and have never been questioned until lately, and the supreme court has declared that unconstitutional; you say those you have just read have been on the statute book of Illinois for years, but have never been tested; therefore you don't know whether they are constitutional or not?

Mr. Painter: I desire to say that the question the professor has just been discussing, and the point of law he seeks to make, has never been decided by this supreme court, and we have plenty of cases in which they decide the other way.

Mr. Price: In justice to the supreme court, I want to answer Mr. Silberberg, or make it a little more definite, so that the gentleman may understand, if he does not, that our supreme court in the past, as you are probably aware, had all gone one way; but that they have turned themselves topsy turvy and gone just the other way. On the question of classification, there is a decision in the Seventh Ohio State, where the question of a waterworks board, created by council, came up, and our court held that the council could legally abolish the office. Now, if they could legally abolish a thing that never existed, I don't know how it could be done.

Prof. Fairlie: It seems to me that this question is a distinctly—

Mr. Gear: May I interrupt? I understood you to say that the Constitution of Michigan left it optional so that a village or a number of people who would constitute a village, could form themselves into a municipality?

Prof. Fairlie: No; the point I was discussing was the question of the restriction of the constitution on the power of the legislature. The legislature passes special laws for particular cities and villages, and they are perfectly constitutional in Michigan, because there is nothing in the Constitution requiring general laws.

Mr. Gear: Do I understand you to say that the legislature chooses the mayor?

Prof. Fairlie: Yes.

Mr. Gear: Isn't it true that Kalamazoo is controlled by township trustees—a city of 15,000 or 20,000—that they have no mayor and no council?

Prof. Fairlie: That may possibly be true.

Mr. Gear: It is true that they have no council, no mayor—that the board of trustees and the town clerk are the only officers?

Prof. Fairlie: I think it somewhat strange that I have never heard about it. I have been trying to find out what I could about municipal government, and I would not like to state that it is not so, because, as I said, the cities there are governed by special charters, and it is impossible for one to know every individual charter.

Mr. Price: Are you a lawyer by profession, professor?

Prof. Fairlie: I am not; but I have made a special study of *this* question of municipal law, though I am not a practicing lawyer.

Mr. Price: Nor admitted?

Prof. Fairlie: No.

Mr. Price: Have you examined the law reports of Illinois to *see* whether the questions have ever been before the court?

Prof. Fairlie: There is no case on that clause in the city *charter* in the constitution; I have looked up that particular point.

Mr. Price: Did you look at Pennsylvania?

Prof. Fairlie: No, I have not.

Mr. Price: There are four or five states that have borrowed *from* Ohio, in the provisions of the constitution, more or less.

Prof. Fairlie: Quite a number of them, that is, quite a number of them have some provisions of special legislation. I will go back to *the* point. It still seems to me that the fact that no one has thought *the* point worth bringing to the supreme court, and there is *considerable* evidence in favor of it. It has been evident that a *great many people* were not satisfied with the decision of the supreme court here; the *large* amount of litigation on the question of classification shows that *the* lawyers of the state are dissatisfied.

Mr. Gear: Professor, do you understand, or have you read *the* constitution of Kentucky?

Prof. Fairlie: Not completely.

Mr. Gear: Do you know of any decision ever rendered by the Supreme Court against classification? Kentucky has the same constitution that Ohio has, in reference to the formation or the organization of municipalities. Do you know of any decisions of the Supreme Court where they have decided against classification?

Prof. Fairlie: No; I don't know of any decision. Simply from reading the decision of the Supreme Court here in Ohio, and my own opinion,—although I confess I am less sure of this — my own opinion is, that the court has not pronounced against our classification in Ohio, because it seems to me it distinctly guarded itself on that point. At the same time, however, it is quite possible that that may be their intention; but this Illinois analogy—it is only an analogy but it seems to me to point to the fact that organization does not necessarily mean that the legislature must create every officer which exists in the state.

Mr. Price: We have had similar statutes to that, only not so broad, since 1852 or 1853, when the first municipal code was adopted, but our council is not given broad powers of that kind.

Prof. Fairlie: In view of the fact, however, that there is a question raised, that the legislature cannot take this authority, and the fact that the bill presented does undertake to regulate in detail, the offices of the city, it will perhaps be worth while for me to at least state somewhat of my own opinion on the question, as to what would be the best form. Now, in reference to the plan proposed in the bill before us: The first point I would make is, that the bill is not consistent with itself; it provides for three boards, a Board of Public Safety, a Board of Public Service and a Board of Sinking Fund Trustees; but each of these three boards differ from all the others in several important respects; we have one elective board and the other two appointive boards, two bi-partisan boards. Two of the boards, at least by implication, are to be salaried boards, the other is distinctly stated to be an unsalaried board. It seems to me that this difference indicates a distinct lack of any guiding principle in the formation of the executive office. There is at least something to argue in favor of the board principles, but that point being reached, the next point, it seems to me, is, what kind of board is the proper kind of board to have, then create all your boards on that one model. That would at least be a consistent system. The present bill is open to that objection then, that it does not follow any distinct principle in providing for the various boards; it presents varying methods, for which there seems to be no good justification. The board question which comes next, is as to whether a

department head, or the head of the great spending department — which is really the question at issue — should be a board or a single commissioner. My own opinion is distinctly in favor of the single head. It seems to me that the board system necessarily divides responsibility in the work of the board, that it is most likely at time to delay action, and in reference to bi-partisan boards, I cannot speak so much from a personal knowledge of the situation in Ohio, but certainly the situation, as it has been and as I have watched it in New York and in Detroit, has shown that the bi-partisan boards have been, not less, but clearly worse than the most partisan, or single commissioner. It was a bi-partisan board of police that appointed the notorious Mr. Devery of New York City. A single commissioner, it seems to me, is distinctly more responsible and can have the proper work done more quickly, and more certainly, than any number of boards, and the point that has been raised that a board of several members can do more work than a single commissioner, needs, it seems to me, but little information to see its weakness. You can turn to the largest business enterprises in private life to see how much can be done under the control of one man with proper assistants, or you can turn to the national administration and see what is done there under a system of single heads. I do not think any one could pretend that the public works of the largest cities in the country are any more serious or involve any larger amount of skill in their control than the public works carried on under and by the national government, in the improvement of rivers and harbors, which is done entirely under the direction of the chief engineer of the United States Army; or that the work of controlling the police force of the largest city in the country is any more difficult than the work attached to the direction of the post office department of the national government, which again comes under the general direction of the postmaster general.

Two other criticisms made against the single commissioner system and in favor of the board system, should perhaps require some notice. The one is perhaps not so much a criticism of a single commissioner, as a point that is raised in connection with the board system, that is, the question as to boards which go out all at once, or boards which are renewed one member at a time. Under the board system, where the board is composed of men who give only a part of their time to the work of the city, the same argument for partial renewal would apply. It seems to me, as I have mentioned, in connection with the partial renewal of council; and if that is the kind of officers you expect to have in your

cities, then there is the same argument in favor of the board which renews itself by parts, so that you can have men of experience; but when you demand the whole time of an official for the work of the city government, and pay him a salary commensurate with those duties, you then place yourselves in a position where you have a right to expect that the man shall be one who understands the duties of his office; for you are not then going to take men and choose them for office as you do the members of the city council, who are taken from their private business and expected only to give a small portion of their time to the city; but if you are going to pay the man \$4,000 or \$5,000 salary per year as director of public works, you have a right to expect that that man will be a man who understands considerable about the duties of the office.

The other point is the question, which, if I remember rightly, the mayor of Cincinnati said was, after all, the only point on which objection could clearly be made to the single commissioner system, — the danger of the man building up a machine. My reply to this is that that danger exists also, to some extent, even under the board; that neither under the board, nor the single commissioner system, are you free from that danger, unless the control of all appointments is exercised only in the interest of procuring efficient men and efficient officers in the subordinate positions in the city government. So that under any form of government, you are bound to come to that question and that difficulty; but the method of selecting the technical officers and the subordinate clerks and officers, must not be by political choice, or by men who will use them for their own private or party purposes.

The method by which they may be selected — the method by which efficiency may be secured is one which you have doubtless discussed and heard talked about again and again. There are now two states in the Union which have such a system applied to all its cities, and one other where the system is optional with particular cities, and a number of other scattered cities which have attempted the same system. The State of New York has such a system, whereby each city has what is called a Civil Service Commission, which controls the examination and the appointment, and limits the power of appointment and the power of removal. The State of Massachusetts has a system under which a state board, one board, conducts state examination for all its cities in the state; the Massachusetts system has the distinct advantage of being the simpler. The smaller cities in New York complain, to some extent, of the addition of another board, even if it is an unpaid board, as it is, in the smaller cities

there, which adds somewhat to the cumbersomeness of their city government, and for that reason, the Massachusetts system is a decided advantage. The appointing power has such discretion to make appointments from those who pass the examination prescribed by these boards or these commissions, as a feature in favor of the New York plan; and in both Massachusetts and New York, there is a strict limitation on the removal of such officers, except for just cause.

I think I have perhaps taken up as much time as I am entitled to, but may I perhaps mention one other point which does not appear in the code at all,—well, this particular point is in the code, too; but the one I wanted to mention is this, as to the residence requirement for officers in city governments. It seems to me that a business man, a man doing business in a city, should not be disqualified for holding office in the city, because his residence happens to be just outside the corporate line. A man doing business within a city and residing within a certain distance should be entitled to be elected to and hold municipal office.

Another point which I have in mind is that it seems to me that the same men are entitled to vote in municipal elections in cities where their business is located.

I believe that is all I have to say.

Mr. Willis: I would like to ask the professor one question: It is provided here in this bill, in line 1303, that the members of the village council shall all be elected at large; do you favor that proposition?

Prof. Fairlie: I think for a village, that is entirely all that is necessary; villages are hardly of sufficient size to necessitate the division into wards.

Mr. Price: What constitutes the organization of a village in its simplest form, or of a municipality in its simplest form?

Prof. Fairlie: That is a question which I heard you ask this afternoon. I think I shall answer you by asking if you can tell me what constitutes the organization of a private corporation, in this state? Does your state law on private corporations undertake to decide that a railway company must have a general manager, or a superintendent, or a passenger agent or a freight agent?

Mr. Price: In a general way, I can tell you, and I think it will be pretty nearly accurate: It provides for a board of directors of not less than five, nor more than fifteen; it provides for a president, secretary and treasurer, but there is no disqualification to prevent a man holding more

than one office, and a majority of the directors shall constitute a board for the transaction of business.

Prof. Fairlie: With power to create such other offices as they deem essential?

Mr. Price: They do it, anyhow. That is as far, I think, as the law goes.

Mr. Painter: It also provides for a vice president.

Prof. Fairlie: If that is sufficient for a private corporation, I cannot see why a mayor, a city clerk, and a city council would not be sufficient for the organization of a municipality.

Mr. Price: In other words, take a corporation purely as a corporation, not separating it from the duties imposed upon it by the state, and its duties to other localities, and you would not draw much distinction between a municipal and a private corporation, in the organization?

Prof. Fairlie: No; I do not.

Gentlemen of the committee, I thank you very much for the opportunity you have given me here, by listening to me so courteously on this matter.

Mr. Northup was then introduced by the chairman, and addressed the committee as follows:

Mr. Chairman, and Members of the Committee: I have nothing to say to the committee on the question of the general policy to be pursued in the enactment of this new code, but in what I shall have to say, I shall take it for granted that the bill which has been known as House Bill No. 5, will be the one under consideration most of the time by members of the committee. It has occurred to me that there are some omissions, due probably to oversight, and to these, or some of them, I desire to call the attention of the committee to-night.

By reference to page 73, it will be found that section 2702 of the Revised Statutes, as it stands at the present time is expressly repealed. I do not think that the gentlemen who drew this bill intended to repeal that section.

Mr. Price: They say that was put in by the printer running along consecutively; the same mistake occurred, and the same thing applies to section 2699.

Mr. Northup: I thought that was an oversight, because, by section 32, they except from the operation of that statute certain contracts, such as contracts for public heating, which, by virtue of their nature are necessarily long time contracts, and a council, where it had a con-

tract for five or ten years could not well certify that the money was on hand to discharge that obligation.

Mr. Price: Did you examine those repealed sections?

Mr. Northup: I have not, except that one. In that connection, I wish to call attention to section 32, which reads: "Council may authorize a contract with any natural or artificial gas company, electric or other light company, water company, or heat and power company for lighting, heating or supplying with water or power the public buildings and places and the streets, lands and squares of the municipality for periods not exceeding ten years, and as to any such contract, it shall not be necessary that the money needed therefor shall be in the treasury at the time said contract is made, but all moneys for such purpose shall be appropriated from time to time, as other moneys used for municipal purposes." Now it occurred to me that there is another kind of contract that ought to go in there, and that is a contract for the collection and disposition of garbage. In another place you have expressly authorized cities to own their own garbage plants, and have also expressly authorized them to enter into contracts for the collection and disposal of garbage. Now, this is an important matter in the larger cities. Until I lived in a city the size of Toledo, I paid no attention to it, whatever; it did not strike me as being of any great importance, but since living in a city, I have observed it is a matter of grave question in cities. It is a matter which gives rise to a great deal of contention with us. There are two ways of taking care of garbage; by crematory and by a disposing plant. A crematory will cost upwards of \$20,000, and a disposal plant such as would be required for a city of from 150,000 to 200,000, would cost from \$10,000 to \$50,000. No man is going to put a plant like that in a place, under a contract for one year; the contract would necessarily have to run from five to ten years, and judging from the prices paid in other cities for the collection and disposal of garbage, I should say that in a city the size of Toledo, it would cost anywhere from \$20,000 to \$50,000 a year to collect that in the way it is now collected.

Mr. Silberberg: In Cincinnati, it costs \$37,000.

Mr. Northup: In Detroit it costs \$40,000. No city is going to tie up a capital of \$100,000 on the auditor's certificate, any more than it would for light or heat, or any kind of contract; so that I suggest that you add, in that section, contracts for the collection of garbage, and provide that it is not necessary for the auditor to give his certificate, or

that he certify that there is sufficient on hand to pay the amount the first year.

I want also to call attention to something which seems to me to have been an oversight; that is on page 6, where, under the general powers conferred on cities, they re-enact the present statute which stands in the revision as section 1692, conferring on cities and villages the power to lay off, establish, plat, open, widen, narrow, straighten, extend, improve, keep in order and repair, light, clean and sprinkle streets, alleys, public grounds and buildings, wharves, landings, docks, bridges, viaducts and market places within the corporation, including any portion of any turn-pike or plank road therein, surrendered to or condemned by the corporation. You confer, by that section, the power on the municipalities to straighten streets, but in the section which authorizes the city to exercise the power of eminent domain for the purpose of acquiring title to land, you do not confer in that, the power to acquire land for the purpose of straightening streets. On page 9, it provides: "For opening widening and extending streets and other public places." Now, in cities where the population has grown rapidly, it often becomes necessary to straighten out some of the streets, and for that purpose the city ought to have the power of eminent domain. I think that must have been an oversight. I would suggest the insertion of the word "straightening" after the word "widening," and thereby make it conform with the power conferred.

Mr. Allen: I would like to suggest to the speaker that it has already been suggested that the words, "and change the grade of," be inserted in that section, also, in that same line 196.

Mr. Northup: Well, that would be very proper unless, in the section which follows later, in which the manner of condemning property is set forth; in changing the grade, as I understand it, it is provided that wherever an improvement is to be made, any person having abutting property, files a claim with the city within twenty days, after service upon such person of a notice, or of a copy of the resolution making the improvement, and the council may cause the city solicitor to cause an inquiry to be made in the probate court, for the purpose of ascertaining the amount of the damages. Of course the purpose of having this made before, is to ascertain the probable cost of making the improvement.—The change you suggest should be made, unless that is provided for in this section.

I refer now to page 23, to the section relating to assessments. I have been unable to find any provision in the code as proposed, with

reference to the construction of general sewers. I found here a general provision for the construction of sewers, that council may provide for assessment of the cost and expense of the construction, on abutting, or other specially benefitted lots and lands in the corporation. Now, there are only two ways of paying for general sewers: we must either assess it upon the general tax list and pay it out of the general, or we must divide the city into sewer districts and assess the expense of the construction of the general sewer on those districts. I think in Cincinnati they pay it out of the general fund, and in Toledo I think they have the city divided into 26 or 28 sewer districts.

Mr. Williams: There are sewer districts in Cleveland, also.

Mr. Northup: I find no provision here for that; of course you could not assess on abutting property all the cost of a general sewer, because it would not stand it. The general sewers are necessary to be had, before you can have your local or lateral sewer, and as a matter of health, all persons in the city are interested in general sewers, so that there are arguments in favor of paying it out of the general fund. You should determine in this code whether or not you desire to pay it out of the general fund, or on special sewer districts, because if there is no provision, it will have to be paid out of the general fund, except you would be authorized to make an assessment upon abutting property to the extent of the local benefit conferred, and to the extent that the general sewer might afford local drainage to the local property.

Mr. Comings: In what section should that be inserted?

Mr. Northup: I would not insert it in any of the sections; I think it ought to be re-written. As I said before, there is a general section providing for a general sewer; that has to contain the provision that in certain cities it shall be done one way, and in another city it shall be done another way; so that you must take every one of those provisions and make it a general law; because there are two or three ways at the present time of constructing sewers. In Toledo, we think our way is the best.

Mr. Price: Give council the option of constructing it in one or two different ways. Put the Toledo way in, and also the general statute.

Mr. Northup: 'I don't see how you could do that, because you could not provide for paying it out of the general fund, and also paying it out of special sewer districts.

I want also to talk to you a few moments on some other provisions of this assessment statute. I do not agree with the policy that is outlined here with reference to the extent of the assessment; this provides that the

assessment shall not exceed 25 per cent. of the tax value of the abutting property; I think that is too small; that assessment includes all manner and kind of improvements, sewers, sidewalks, etc. Then there follows this further provision, "nor shall there be levied any assessment for sewer purposes exceeding 10 per cent. of the tax value of the property assessed." So that if you take out 10 per cent. for sewers,—and my experience and observation has been that cities will run up, in a great many instances, to the line of limitation pretty closely—if you take off 10 per cent. for sewers, you leave 15 per cent. only with which to construct sidewalks, pavements, etc., and you know as well as I do that it cannot be done for any such sum as that. The present statute is 25 per cent. of the value of the land after the improvements, and I think that should be retained; I think it should be expressly provided that 25 per cent. should be 25 per cent. of the value of the property after the improvement has been made.

Mr. Price: Suppose you would raise that to 50 per cent. of the tax value, then what objection would you have?

Mr. Northup: Well, I think that would make it, possibly, a little too large. Another objection to the 25 per cent of the tax value is this: That the valuations are made in different amounts in different communities; in one place tax valuations are about sixty per cent. of the actual value of the property, in another place, it is 50 per cent., in another 75 per cent.; I have never heard though, of it being 100 per cent.; it will vary from 50 to 75 per cent., and so the rate of the assessment would vary according to the different localities, which I think is not desirable. In the city of Toledo, I think our valuation are about 60 per cent of the actual value of the property, and 25 per cent of that would be 15 per cent., so that the effect of this, as it stands now, you could not assess any man's property more than 15 per cent in five years, no matter how much it benefited him. I do not think that is right, gentlemen. It should be remembered, too, in fixing this limitation, that if anyone thinks it is pretty high, in no case can the assessment exceed the amount equivalent to the actual benefit conferred, so that the property owner cannot get the worst of it, no matter what the limitation is. Now, this section authorizes the board of public service, I think it is called, to make these improvements and to assess them upon the abutting and benefited lots and lands, whenever it sees fit, regardless of the wishes of the property owner. I think that improvements that are to be assessed upon abutting property, should

only be made upon the petition of a majority of the owners to be assessed. There has been considerable dispute as to who are the owners, and who not owners; I think if that clause should be put in, that word "owners" should be said to mean such persons as are owners of property at the time the petition is presented asking for the improvement. Then as soon as that petition is presented, it can be referred to the city abstractor and he can prepare and abstract the title to an absolute certainty and know who are the owners. In cities that are growing rapidly, there is a very general clamor for street improvements. Now, our town is divided by the river, and over on the east side we have a population of some 18,000 or 20,000 and they cover considerable territory; those two wards over there cost the general fund more than any four wards in town, because they want every street improvement and they want every street to be as well improved as in the centre of the city, and any person who wants to lay out a plat is immediately around with a petition to have the streets opened up out to his plat. Now, the public clamor might be such, that for political reasons, the board would see fit to order an improvement, and I believe this could be headed off by the provision that the improvement should not be made unless upon the petition of a majority of the owners to be charged. Also, in this connection, I want to call attention to the fact that there is no provision in this code, as far as I am able to determine, with reference to paying the cost of re-paving streets, and that is one thing that has interested us a great deal, and caused us some trouble in Toledo. We have some streets that were paved with asphalt and a poor job was done, poor material used, and the street soon broken up; we have one street where for a mile or a mile and a half, there are great patches of the asphalt gone. The property owners paid a large assessment, and they swear that they will never petition for another one. The public goes over that and is jolted and discommoded every day, because the property owners on that street will not petition for an improvement. I would suggest that the plan in vogue in some other states might be adopted in this state, and I would suggest that the section provide that where a street has been paved, or where another pavement is required, that two-thirds of the cost of re-paving the street be assessed upon the general tax list, and the remaining one-third upon the abutting property; I think that would be an equitable way of disposing of the question, and in that way, cities would not have their downtown streets kept in a bad condition, because of the property owners not petitioning

for an improvement that is needed by the public in general more than by the property owners, not wishing to pay this cost when they have already paid for one pavement.

Mr. Silberberg: Part of that is provided for in the bill, as the cost of repaving, isn't it? Is there a provision for repaving there?

Mr. Denman: It is provided for in the Omnibus Bill, in the Longworth bill.

Mr. Northup: That provides for all the payment out of the general fund?

Mr. Denman: Yes.

Mr. Northup: I am not quite in accord with that; I think the abutting property owners should pay something.

Mr. Silberberg: The abutting property owners, in the first place have paid \$14 a foot—\$7 a foot, I mean, half being paid by the city. I think if the owner of the property pays \$7 a linear foot, I think he ought to have more use out of it than only for two or three years.

Mr. Northup: Yes; but not for a hundred years. The ordinary life of a pavement is from ten to twenty years, and if it wears out in two or three years, it is the fault of the contractor and of the execution, and not the fault of the system.

Now, Mr. Matthews this afternoon objected to that provision, commencing at line 580, which says, "The municipality shall bear not less than five per cent. of the charges and expenditures referred to herein." He said he thought that ought to be two per cent.; I think it ought to be ten per cent. myself, because the city ought to pay for intersections, and they amount to about ten per cent. of the whole length of the pavement; therefore, I think the limitation ought to be ten per cent. instead of five, and under no circumstances should it be decreased below five per cent.

I think, gentlemen, that is all I desire to say to you, except that in conclusion I want to take the liberty of suggesting that both sections in regard to assessments ought to be completely rewritten.

Judge Thomas: I would like to ask the gentlemen if he thinks it would be better to elect the city solicitor or to appoint him?

Mr. Northup: Oh, I don't think there ought to be any doubt on that subject. I think if there is an officer in the city who ought to be elected it is the city solicitor. In Section 1777, the city solicitor is made a check upon misappropriation of public funds, and indeed, any abuse of corporate power, and it would be an anomalous situation if the per-

son who were to apply for an injunction, for instance, should be appointed by the person whom he would ordinarily be required to enjoin, otherwise the mayor. Where money is sought to be misappropriated by a council or a board (and it is the same under this code as under the present law) the mayor would have to approve a resolution of the ordinance and the ordinary way for the solicitor and the tax-payer, where the action is by a tax-payer to enjoin, is to enjoin the mayor from approving the resolution or ordinance; and of course, a city solicitor would be disinclined to go against the will of the person who appointed him.

Mr. Guerin: If these are all the questions the members desire to ask, I understand there are two more gentlemen here this evening who desire to address the committee. The hour is growing late and I know we want to hear from them both. I move that these gentlemen be requested to confine their remarks within a limit of ten minutes.

(Said motion was seconded and upon vote, carried.)

Mr. Bennett, of Bon Hill, Hamilton County, was introduced by the chairman, and addressed the committee as follows:

Mr. Bennett: Mr. Chairman and Gentlemen—You have heard a great deal from the members of the league of villages of Hamilton county, and I do not propose to take very much of your time, and there need not be a limit of ten minutes, five will be sufficient for me, but there are some features of the code about which I have something to say to you.

There are some features in the assessment law which have not been touched upon by anyone, so far as I have heard, and those I would like to bring to your attention. For instance, line 580 provides that the municipality shall bear not less than 5 per cent. of the cost of intersections of streets. Now, that is 5 per cent. in cities and also in villages, and it amounts to a large sum of money—it amounts up into the thousands. It also provides that the corporation shall pay this in the same manner required of property owners assessed. That means, if the assessment is made in installments that the city must pay the assessment in installments. Now, Section 2702 of the Revised Statutes, as it stands to-day is not repealed, as I understand it, and that provides that the clerk must certify that the money is on hand and not appropriated for any other purpose. Now, it certainly seems to me that the 5 per cent. should be exempted from the provisions of that law; it would seem to be an idle thing that the city should have the five per cent. on hand, ready to pay this contract, and still be required to hold it for ten years, say, and

while 5 per cent. sounds small, yet 5 per cent. of a large improvement is a large sum of money.

Another question on assessments is as to the sidewalks. It strikes me that sidewalks should be permitted to be constructed and repaired in an entirely different manner from that of other street improvements; they are something that require to be attended to at once, when they do need repairs; under the provisions of the code, they are very general and include all improvements, such as streets, sewers and sidewalks, and it would take at least two or three months to repair a little sidewalk, if you wanted to assess it back upon the property owners. I think it is very clear, and is the best law, simply to re-enact the law which we already have as to sidewalks, and also, to re-enact and make general the so-called Richardson law, which gives the municipality the right, upon petition of the property owners, to make a sidewalk, and the city or village shall pay one-half, and the property owner one-half of the cost; that strikes me as being the fairest sidewalk law ever passed. In speaking for the members of the council in the village in which I live, or rather for the two villages, I want to say that they are all in favor of making the office of city solicitor an elective office, instead of an appointive one. They consider it of great importance, and, as the gentleman who has preceded me has so well said, he is a check upon the other departments, and he should not be appointed by any department against which he might have to bring suit and he should owe no allegiance to any one except to the people who elect him.

As to the council, it certainly seems to me that it would be an unwise provision of the law to make all six councilmen in villages come into office at the same time. In villages, it is hard, in the beginning, to get men to serve as councilmen; there is no pay attached to it; they have a lot of bother and there is always the chance of getting the ill-will of your neighbors in a small village, where a man serves in council, and usually, after the man has had the office three years, you will seldom, if ever, get him to take a second term; therefore, when you have an election of that kind, you will have an altogether new council, and no matter then what improvements may be in course of construction, you will have to start from the beginning and work the whole thing out, in order to get any intelligent idea as to what ought to be done, and that means delay and great expense to the city or village.

On page 52. Section 117, it provides that councils of villages shall be governed, so far as applicable, by the provisions of Sections 75, 76,

77, 78, 80 and 81 of this act. We have no objections to the provisions of 75, 76 and 77 applying to villages, but 78 we do seriously object to. That provides that no expenditure of money shall be made unless it is by ordinance or resolution, and that ordinance read upon three separate days, and that there shall be no suspension of the rules. In villages, council meets, on an average, twice a month; that means it would take six weeks to pass an ordinance, a pay ordinance, providing for the pay of the men having charge of the streets, or the pay of the village marshal, and of every minor employe, even down to a stationery bill. Under Section 81, that ordinances, after passage, must be handed to the mayor, and that the mayor is entitled to hold them for ten days, or until the next meeting of council, which is another two weeks, you would have still greater delay. Also, at the end of the ten days, if he should be at outs with the council, he is entitled to veto the ordinance; then council must wait another ten days before they can pass the ordinance over his veto; that makes ten weeks before you can pass an ordinary pay roll, provided there was any friction between the mayor and council. It does not strike me that there is any reason at all why, in villages, the mayor should have this power.

Mr. Price: Why wouldn't it take longer than that, since you have to pass it the second time the same you do the first?

Mr. Bennett: It probably would, but that is the inside limit. As I was going to remark, the mayor is here given the chance of disapproving of an ordinance or resolution; that is all it amounts to; it is supposed to be a veto, but in villages it does not amount to a veto, because, when you pass the original ordinance, it requires four votes. Now, the mayor is entitled to hold it and disapprove it, delaying it for four weeks, and then strange as it may seem, that ordinance can still be passed by the same four votes that originally passed it. Now, there certainly cannot be any wisdom in that, simply giving the mayor the right to delay action on every ordinance and resolution passed by council.

The chairman then introduced Mr. Mithoff, of Lancaster, who addressed the committee as follows:

Mr. Chairman, and Members of the Committee: I hardly intend to make a speech to-night, but the city of Lancaster is deeply interested in this code.

About the year 1888, we went into the natural gas business, we own a natural gas plant, and we have invested in that plant probably \$50,000. Now, there does not seem to be any provision at all, under the governor's

code, by which we can continue the operation of that plant, and I am simply coming to see whether this committee does not think some such provision could be made. The code speaks of gas works there and of lighting and heating plants, but I do not believe it is the intention of the legislature, if it passes this law, to provide that every city in the state should go into that kind of business; but we have the plant; we issued bonds in 1888, and those bonds have been sold and have been paid off, and we have all this money invested in the plant, and it is the only city in the state which has such a plant, and of course, we desire to protect it in some way, as far as possible.

Mr. Stage: Would not section 15 cover your case?

Mr. Mithoff: I don't believe that it does; if that would cover it, the city of Lancaster would have a right to go into the gas business and sink wells, etc., and I don't believe that would cover it at all.

Mr. Price: Mr. Mithoff, do you own land down there — does your corporation lease land?

Mr. Mithoff: Yes.

Mr. Price: Do you use gas for municipal enterprises?

Mr. Mithoff: Yes; and supply the city.

Mr. Price: And sell to manufacturers?

Mr. Mithoff: Yes.

Mr. Williams: Fostoria has done that for a number of years, too.

Mr. Mithoff: The original laws under which this was done, was a special law, providing that in cities having a population at the last federal census, of 6,803, could issue bonds for the purpose of going into that kind of business. Of course, such special acts are never sustained by the Supreme Court of the state; the act gives the exact population of our city. But, as I say, we have this plant here; it belongs to some one, and there is no one that has any better title than the city, and we want to continue this plant.

Mr. Guerin: That gas is furnished to all the citizens?

Mr. Mithoff: Yes.

Mr. Guerin: At a uniform rate?

Mr. Mithoff: Yes.

Mr. Guerin: It is a public utility?

Mr. Mithoff: Yes.

Mr. Guerin: It makes no difference what they use it for, it is furnished to the citizens if they pay for it.

Mr. Mithoff: Yes; just the same as artificial gas.

Mr. Denman: You have no bonded indebtedness on the plant now?

Mr. Mithoff: No, sir.

Mr. Denman: It is clear of debt?

Mr. Mithoff: Yes, sir.

Mr. Price: I will say that on this particular question, Mr. Voorhees, who is our insurance commissioner, and an attorney at Lancaster, feels as Mr. Mithoff does.

Mr. Denman: How about line 134?

Mr. Price: Mr. Voorhees also is familiar with line 134, and still thinks that does not answer it. I would merely suggest to Mr. Mithoff that he draw up such an amendment to that as will meet, in his opinion, the emergency, and send it up here by some one. The question would be, whether you can draw it, that in cities now owning their natural gas plants, they shall do thus and so—look that question up. I will also ask you whether this bill repeals your law, and also, whether you consider it safe, from the fact such laws have been held unconstitutional?

Mr. Mithoff: Such laws are never sustained by the Supreme Court of the state, were not, even at that time. This law refers not only to a city of the fourth class and second grade, but it specifies a city having a certain number of population at the federal census of 1880; it could not be any more specific unless it would name the city.

Mr. Price: What I was trying to get at, was whether it would be proper to bring this matter up in the code or not.

Mr. Mithoff: There is another thing I would like to call to the attention of the committee, and that is in the governor's code, providing that a levy might be made for the creation of a certain fund; you will also find this code refers to the Longworth bill; under the Longworth bill, under "Sinking Fund," can be created for the purpose of paying off the interest and principal upon different bonds, and there could probably be two sinking funds, under this bill then.

Mr. Price: The two together provide for two sinking funds?

Mr. Mithoff: Yes; the Longworth bill distinctly provides that you can levy a tax for the purpose of creating a sinking fund to pay off the interest and principal of the bonds issued under that act. That is the Longworth Municipal Bond bill.

Mr. Price: Does that specifically refer to your city?

Mr. Mithoff: Well, it has reference to every city in the state.

At this point a motion was carried to adjourn to Monday morning, September 8, at 9:00 o'clock A. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

SEVENCY-FIFTH GENERAL ASSEMBLY, EXTRAORDINARY SESSION.

September 8, 1902, 9:30 A. M.

Pursuant to adjournment, the Special Committee on Municipal Codes, of the House of Representatives, met in Legislative Hall, Mr. Comings presiding. The program provided for the session of the morning to be devoted to the consideration of the Code by representatives of Boards of Health and Library Boards.

On roll call the following members were present:

Comings,	Hypes,
Guerin,	Willis,
Price,	Stage,
Thomas,	Bracken,
Silberberg,	Ainsworth,
Worthington,	Huffman,
Denman,	Sharp.

On request of Mr. Guerin, he was permitted to introduce and have read, an amendment to House Bill No. 14, said amendment to the bill being as follows:

Sec. 36a. And provided further, that no grant or franchise or right to occupy or use any public street, highway, alley or land shall be made to any urban or interurban street railway company, or any extension or renewal thereof or the extension or renewal of any such existing franchise, by the county commissioners of any county or the council of any city or village in this state, except that such franchise, extension or renewal shall contain explicit agreement upon the part of such company, for itself and for its successors and assigns, as and for a part consideration of such grant, that said company shall thereafter and by such grant it does accept and agree to perform and keep upon any line or lines of street railway by it owned, leased, operated or controlled, or thereafter by it so acquired, owned, leased, managed or controlled within the state of Ohio, the following conditions set forth in this act:

In the event of any dispute or disagreement between such company and a majority in number of its employes, or a majority in number of its employes, in any one or more of the departments of such company, on its line of railway, or on any branch or division thereof, with reference to the terms or conditions of their employment by such company, which dispute or disagreement cannot be amicably settled between such employes and such company, and where such employes desire that such matter or matters shall be submitted to arbitration in order that they may continue in the employ of such company and thereby not interfere with the business of such company, or cause inconvenience or interruption to the business of the public, such company shall arbitrate such matters in the following manner, to wit :

A majority in numbers of such employes in any one or more, or all, of the departments of such company on the line of its railway or on any division or branch thereof, shall, by notice signed by a majority of such employes, and duly served upon the superintendent, or any one of the other chief officers of said company by any person authorized by such employes to do so, notify such company that such employes desire to submit the matter or matters in dispute to arbitration, and said notice shall clearly state the following facts :

(1) The matter or matters of difference, dispute or disagreement existing between said company and said employes, and the liability of said parties to agree as to a satisfactory settlement thereof, so far as said employes are concerned.

(2) That the employes signing such notice will submit such question or questions of dispute or difference to arbitration, and that they will accept as final and keep and perform on their part the judgment of the board of arbitration which shall try and render judgment upon said matters in dispute.

(3) That such employes will continue under the then existing terms and conditions of employment, will not leave the employ of such company, but will continue to perform the duties for which they were employed, or which they may be directed to perform until the result of such arbitration is determined and will at such time abide thereby.

(4) The name of the person selected by such employes to represent them on the board of arbitration herein provided for and the time and place when such board of arbitration shall first meet.

Such company shall thereupon after receiving said notice forthwith select some suitable person to act as an arbitrator in its behalf, and said

arbitrator shall meet the arbitrator selected by said employes at the time and place mentioned in said notice. Said two arbitrators when so selected shall thereupon select some suitable disinterested third person to act as the third member of said board. In the event that said two arbitrators are unable to select a suitable disinterested third person, it shall be the duty of the Governor of the state of Ohio, upon request of either of said arbitrators, to select and appoint some suitable disinterested person, and such person, when so selected and appointed by the governor, shall constitute and be the third member of said board. In the event that any such company shall fail to appoint an arbitrator in the manner herein provided, and within three days from and after the date of the service of notice upon it as herein provided, or that such arbitrator having been selected should fail to act as such, the commissioners of any county, or the council of any city or village in which such company is in whole or in part situate, shall, upon the application of the arbitrator appointed by the said employes, appoint a suitable and disinterested person to act as arbitrator for such company, and said arbitrator, when so appointed, shall have the same powers and privileges as if appointed by such company. Said board, when so selected, shall forthwith proceed to organize and to inquire into, and to ascertain the nature of the dispute or disagreement, between said employes and said company; the reasonableness or unreasonableness thereof as the case may be; the ability of such company to comply with the demands of its employes, and all such other matters as it shall deem necessary, to determine the matter in controversy, and said board, after recording a full and fair examination and consideration of such question or questions, and after having given opportunity for each party to be heard by council or otherwise shall render its judgment, which shall be final. The cost of such arbitration, if any there be, shall be paid in the manner ordered by said board, and said board may require both parties to give bond for the payment of said costs in such amount as they may deem necessary before the commencement of said proceedings; and the result or judgment of said board shall be final as between the said parties for a period of not less than one year from and after the rendition of the same.

Each member of said board shall have power, while inquiring into the matters referred to them, to administer oaths, to compel the production of books and papers, and to compel the attendance and testimony of witnesses before them in the same manner as like power is conferred by law upon a notary public.

The Chairman: Will the committee take any action upon this amendment, or will it be received by common consent?

Mr. Guerin: That is all I ask, that it be received and considered a part of House Bill No. 14.

Mr. Bracken: I intended to offer an amendment on the same subject, and I would like to submit the following, to go into the committee's report:

"And pay not less than twenty-five cents an hour in wages, to its employes, and require no more than eight hours service of the employes, the service to be performed within any ten continuous hours of any calendar day."

The Chairman: There is no objection.

The Chairman: The program for this morning, is health boards, or the health part of the code. The code provides that the health board shall be placed under the charge of the board of public service; recommendation has been made that it be placed under the charge of the board of public safety.

Mr. Hypes: The sub-committee on health has arranged for Doctor Probst, as chief health officer of the state, to take charge of the program while this subject is being discussed. He has secured the attendance of representatives of the health boards from various points in the state, who will address the committee, and in order that the greatest good may be had from these remarks that shall be made by these gentlemen, I would like to suggest that the members of the committee refrain from asking questions until each speaker has concluded; the members making any notes they wish, and at the conclusion of the address, they can ask such questions as may occur to them.—This is only a request, not a motion.—Doctor Probst will have charge of the program.

Dr. Probst: I would just say, Mr. Chairman, that at the request of the sub-committee, I sent out an invitation to all of the boards of health of the cities and villages in the State, to the health officers and members of different medical societies interested in this question, notifying them of this meeting, and inviting them to be present, in the name of your committee. Dr. Marten of Cleveland, who is the representative of the Academy of Medicine there, has agreed to open the discussion, in presenting some resolutions that have been adopted by them, in reference to this matter.—Dr. Marten.

Dr. Marten: Mr. Chairman and Gentlemen of the Committee: As chairman of the legislative committee of the Cleveland Academy of Medicine, I have been requested to read to you this resolution:

"Whereas, the protection of the health of our citizens is a duty subordinate to no other duty within the scope of municipal control, and

"Whereas, the experience of this city has abundantly demonstrated the importance to the community of an independent department of public health, now therefore, be it

"Resolved: That the council of the Academy of Medicine of Cleveland recommends and respectfully urges that, whatever may be the special form of municipal government finally adopted, the health department of cities should be made independent of any other department, subject only, like other departments, to the legislative and executive authorities of the municipality, and further, be it

"Resolved: That all employes of the department of public health shall be chosen in accordance with civil service regulations."

Dr. Probst: Dr. Brant, the health officer of Toledo, is here, and I would call upon him to discuss the subject of this resolution.

Dr. Brant: Mr. Chairman and Gentlemen of the Committee: After reading the proposed code for the state of Ohio, and finding that the department of public health was placed under the department of public service, it appeared to me it was getting the department in rather a bad way, so far as efficiency and service was concerned. As the gentlemen of the committee well know, matters of public health are not usually much thought of by the laity at large, until brought to their notice very forcibly by something in the nature of an epidemic; then they call into service the department of health. Now, in the department of public service, as now proposed by the code, the board is composed of three members elected every three years. Now, to keep the efficiency of the department up, for the department itself to stay in working order, practically demands that a man must devote more or less of his time to that work. It occurred to me at that time, and I wrote to Dr. Probst according, as to whether it would be possible to change this department to the board of public safety. But that also has drawbacks; so we decided at the conference this morning, in talking these matters over, that it was advisable to have our board separate and independent from any other board, with which result embodies in the resolutions presented to you here. with which we heartily agree.

Sanitation is a study; indeed, it is an immense study; to become efficient in it, to do good work, and to protect the public health generally, a man must of necessity, abandon his own private practice entirely, and no man can afford to do that unless he has some assurance of proper compensation, and that he is going to be retained in that service a suf-

ficient time to warrant him in abandoning his private practice. For that reason, the civil service clause in those resolutions answers the purpose very well. I have been in the health department myself a little over a year now, and I am just beginning to learn it; in two years, I will probably be fairly efficient; then you will have another election and I will be out and another man in, and you go through the same cycle again, and the cycle will be the same every three years. The plan we have agreed upon and most heartily endorse, Dr. Probst will outline to you later on; but the most important thing is to keep the department as free from politics, and to make of it an independent board, under the supervision, of course, of the usual rules and regulations that govern in municipalities.

Mr. Silberberg: How many members would you want that board to have?

Dr. Brant: It was agreed the board should be composed of five members appointed annually.

Mr. Willis: I presume it was one of the objects of the framers of the code we are considering, to get rid of the large number of boards. Now, what special objection would you have to placing the board of health under the control of the board of public safety, as was suggested? What reasons did you have for abandoning that idea?

Dr. Brant: Well, the board of public safety is a bi-partisan board, appointed by the mayor, with the mayor president, *ex officio*. The board work all right, or it may not. It places the health department in an inferior position, for this reason: the prominent features there will be the police and the fire departments. What pertains to public health, when it comes to this question, will be, to a great extent slighted, the same way we have it at the present time in Toledo. The board of control has charge of the health department, and the health department is, in slang phrase, a side show. The board is not composed of members who are in any way interested directly in public health matters, have never made a study of it. The entire responsibility there falls upon myself, and it is too much of a responsibility for one man to hold. The proper plan would be for the mayor to appoint men, if he appoints them at all, who are mentally competent, and who understand the principles of sanitation sufficiently to be an advisory board for the controlling board.

Mr. Willis: How do you hold your office now?

Dr. Brant: By appointment of the board of police commissioners; they are the board of health.

Mr. Willis: You are an officer of the board, then ?

Dr. Brant: Yes.

Mr. Comings: That is in a city?

Dr. Brant: Yes; the city of Toledo. It is a most intelligent board, but yet, at the same time, they do not help much.

Mr. Willis: If I understand your proposition, I cannot see why the board of public safety would not be just as good a board as the police commissioners?

Dr. Brant: Here is the proposition, on the other hand: You have six cities or seven, in the state of Ohio, where the board of police commissioners are the board of health; all the balance of your cities have a separate board of health. Now, to conform with your state law, there must of necessity be some uniform features about it, and it would be much easier for these six cities to give up two boards, acting as one, and conform to the laws for the balance of the cities, in having one board, as the law now requires, indeed, there is a section stating the board shall be composed of five members, one appointed annually. It is a matter of little importance whether we are under the board of public safety, or a subordinate board of health, so far as that is concerned.

Mr. Price: In a city like Toledo, say that you have five members of the board of health; is it practicable for those members on the board of health to serve without compensation?

Dr. Brant: I don't see why; they do as good work without, as with.

Mr. Price: Then having inferior officers and clerks and provide a salary for them?

Dr. Brant: Yes, the clerk or officer, does the work and is paid for it. The board meets twice a month; the first meeting is devoted to police affairs; the second meeting is devoted to public health affairs and police affairs together; at that time we make our monthly health report for the month previous. They serve without compensation, in our city.

Mr. Price: I think they should serve anywhere without compensation?

Dr. Brant: I don't think it would be advisable for boards of health to serve with compensation; but that is a matter for the committee to decide. It would be better for them to serve without, then you would get public-spirited men, men who were interested in the subject.

Mr. Price: Do you think the same is true of hospitals and asylums?

Dr. Brant: Well, that is getting something different, you are getting into a field of which I know nothing; I know of the workings of the asylum system.

Judge Thomas: Your idea, Doctor, is to make the board of health similar to what it is generally, throughout the State now?

Dr. Brant: Yes, to retain what they now have.

Judge Thomas: Simply the statutes as they now are, outside of the larger cities?

Dr. Brant: No, make it uniform.

Judge Thomas: Making the present law apply to all cities?

Dr. Brant: Yes.

Mr. Denman: You feel then, from your year's experience, that the business of our health department at home, in Toledo, is run subordinate to our police department?

Mr. Brant: Yes, very much so.

Mr. Denman: That has always been my understanding.

Doctor Probst: I will ask Doctor Forshay to address us now.

Dr. Forshay: Mr. Chairman and Gentlemen: The reason for our appearance here to-day, is simply our interest in the question of public health, as a whole, as it affects the citizens of every municipality in the State, whether large or small.—I speak for the committee that comes from the Academy of Medicine, of Cleveland.—Our community has no direct connection whatever with the health officers of Cleveland, the actual administration of its affairs, and has never had any connection, and we come simply representing the medical society, which has a very definite interest in the question of the health of the whole community. We have adopted a resolution which has been presented to you, asking that the administration of the health affairs in our own municipality, be made independent; that is, independent of police and fire departments, independent of the construction of sewers and the digging of ditches, independent of the question of franchises, or whatever else the municipality may have to do. It seems to me that it should not need much argument to prove that the question of the health of the people of a community is of such importance as to demand that its care should be placed in the hands of a board, or of a man who gives his entire time to this question. It is a problem, or a recurring series of problems, which call for accurate knowledge along one definite line. After consideration of the question, with representatives from the various parts of the State, we are all agreed that the administration of the department of health in all our cities, could

best be carried out by a board of health consisting of five members, the term of office being five years, one member being appointed by the mayor of the city, each year. Of course, we are not experts in legal matters, and there should be, very likely, some flaws in that; we are looking upon it simply as sanitarians, the advantages of having a board of that sort. The advantages are about these: The board being unpaid, it would be a matter of honor to serve upon it; a man would be giving his time to the public health of the community; it being unpaid, it would not become a matter of political patronage; the term of office being five years, the board would be continuous; the term of the health officers would move along from year to year, without their being turned out by changes in the administration, and from the standpoint of the medical profession, we believe that the interest of the public would be best served by a health department which is under civil service regulations, with the health officer himself given a very permanent tenure of office, just as permanent as may be, always considering the question of good behavior.

I believe there is only one other thing I would like to say; then I shall be glad to answer any questions from members of the Committee. At the present time, the cities and towns in this State have their health affairs placed in the hands of the Board of Health, appointed in the way which we have agreed upon, and suggested to you to incorporate into the code,—they are now serving under practically these same provisions; that law was passed by this Legislature, of which the committee to which I have the honor to speak, are members, and it is difficult to see a good reason for disturbing a method of government which is now in good working order, and is giving satisfaction in the various parts of the State. Dr. Probst has in his pocket, and later, no doubt, will read to you, letters from many towns in the State, saying that this new law passed by this Legislature last session, is proving satisfactory in all of them.

Mr. Guerin: In one of the codes introduced here, it is planned to have the heads of the different departments in the city appointed by the mayor for the term of three years, and also, this same bill provides that all the employes and officers of the Board of Health shall be under the merit system, or civil service, so-called: I will ask you what objection could be made to the heads of departments, five of them, the mayor, the director of public safety, the director of public service, director of public accounts and the president of the city council, acting as a Board of Health? The bill prescribes that they shall have charge of their various

departments, and the mayor, in particular, is supervisor over everything; it comes within the province of their duty, as laid down in this code, to keep him advised as to the condition of each department, and I would ask you whether, in your opinion, they would not be better fitted to serve as a Board of Health than persons who are appointed by the mayor, who only meet occasionally, and who are not advised, as a rule, as to the physical condition of the city, or of that community?

Dr. Forshay: Replying to Mr. Guerin, I would say that not having thought about a code, providing these things as he says, I am hardly prepared to give a definite opinion; but I do not see any very great objection to having the Board so constituted. The only one is this: That these men whom you name are men who are very busy with their departments of the city's business, and I believe that the question of public health is of sufficient importance to require men with no other public duty except that.

Mr. Guerin: Don't you think that a business man who is fitted by intelligence and experience to serve upon such a board — which, I agree with you, is of immense importance — will have enough of his own private business to attend to, that he will not, as a matter of fact, be able to give this subject such attention as the other men would, who were in the public service, and part of whose duty it is to look after this matter?

Dr. Forshay: I presume that would depend entirely upon the personality of the men in any given case. Dr. Brant's experience in Toledo would show it works very well there in a large city.

Mr. Price: Doctor, state whether or not, in your judgment, other boards, such as Boards of Asylums, House of Refuge and Boards of Libraries, whether you think better service would come to the public if those were placed outside the domain of politics, and without salaries?

Dr. Forshay: I am a member of a number of such boards, and I shall certainly say yes.

Mr. Price: You are a member of the Board of Epileptic Hospital at Gallipolis, are you not?

Dr. Forshay: Yes, sir.

Mr. Price: We have in our cities public institutions, we have reformatories, we have eleemosynary institutions of different sorts; by experience, we have segregated those from the political machinery in a municipality; that has been done through a period of fifty years. In your observation, has there ever been any lack of receiving good service in

these departments, by making them separate and distinct, and permitting the members to serve without compensation?

Dr. Forshay: Quite the contrary.

Mr. Willis: In the hearings before this committee, a great deal has been said about the relative merits of the board, and of the individual. Doctor, I would like to know whether, in your opinion, health affairs would be better administered by boards or by individuals appointed for that purpose?

Dr. Forshay: I can answer that readily; I think it would be better administered by a combination of both; I think the proposition to have a Board of Health, which shall be the adviser of the health officer, will combine the virtues of both methods. He will meet with the board and make reports, and he will probably during thirty days of the month, act upon rules established by the board. When he gets into difficulties which one head always does, he has a board of five members to fall back upon, and with which to counsel.

Mr. Comings: Is it not true that the duties of a board, so-called, are more legislative than administrative?

Dr. Forshay: I am not lawyer enough to answer that question, Mr. Comings. I should hardly think — but I am not prepared to say as to that side of it.

Mr. Comings: Dr. Probst, do you not regard the board more legislative than administrative?

Dr. Probst: Not more so, I should say they are both legislative and administrative. The Health Board devises a certain code of health rules and regulations, and they remain in force without any further legislation, until disputed or destroyed by a subsequent board.

Mr. Comings: I think the committee ought to understand that the duties of the health board are legislative, almost entirely, as I understand the code.

Judge Thomas: Doctor, the present organization of the Board of Health for all cities, except the leading cities of the state, is under the general law, is it not? The general law passed last winter? And so far as you know, Doctor, that organization of the Board of Health has worked well, has it not?

Dr. Probst: The workings are all good.

Judge Thomas: And satisfactory to the various cities, as far as you know?

Dr. Probst: Yes, sir.

Judge Thomas: The law as now constituted, does not provide for a civil service commission in relation to the Board of Health in the cities, does it?

Dr. Probst: No, sir.

Judge Thomas: If the Boards of Health, then, are to be appointed without compensation, as provided in the present law, in your judgment, Dr. Forshay, would it be necessary to have a merit system connected with the Board of Health?

Dr. Forshay: Yes; for the subordinate employees; that would remove any possibility of the position being used for political purposes.

Judge Thomas: Don't you think that expense might be dispensed with, if the board is appointed without compensation — the expense of the Civil Service Commission?

Dr. Forshay: I don't know that it would make any expense.

Judge Thomas: Wouldn't it be, in your opinion, expensive, to provide examinations for persons who desired positions in the health department?

Dr. Forshay: Not if we had a Board of Health serving without pay.

Judge Thomas: If the board itself is acting without pay, where is the need of applying the civil service rules to their department?

Dr. Forshay: It has not any reference to the members of the board themselves being under civil service; it has reference, in large cities, where as you know, the Boards of Health have control of a large force of sanitary police, to such employees. Also, they have a certain number of clerks in the office; it is those employees that we have reference to, as to being under civil service, not the members of the board.

Judge Thomas: You think those should be under civil service?

Dr. Forshay: Very decidedly.

Mr. Denman: Would you have the executive office appointed under the merit system, or appointed independently by the board?

Dr. Forshay: Well, I don't know that it makes a very great difference; if he is appointed by the board, and only the term of one member expires a year, it will take a number of years before enough of a change is made to disturb him; it makes a reasonably permanent officer; it makes it impossible to change the complexion of the board, rapidly.

Judge Thomas: Would not that same thing be true of all the other officers?

Dr. Forshay: I don't know; it might, if there were only a few of them; but if there were a great lot, there would be a temptation for politicians to put a pressure on the board; and remember this: This health officer will be the executive head of the department, and the Board of Health will be serving largely as his advisers; therefore, the health officer will be in the same relation to the subordinates of his department, as would members of the Board of Public Safety be to the police force. It ought to be possible, probably, to remove the executive head in case cause arose; but the term of office, to allow him to become familiar with his duties, should be as permanent as possible; the proposition made by one of the most experienced of sanitarians, Ernest Wendle, of Buffalo, was to make the term ten years.

Judge Thomas: If you introduce civil service rules into the Board of Health, that will be a new element that is not now in the law?

Dr. Forshay: One reason for that is, that the law now applies to boards in small towns, and specifically excepts the large towns, in which the largest number of employes would necessarily be.

Judge Thomas: Then your idea is that what would be good for the small towns would not be good for the large towns?

Dr. Forshay: Good for both equally, without question.

Judge Thomas: If this board and this organization works well in the small towns, why would it not work well in the large ones, without civil service?

Dr. Forshay: Because of the larger number of employes; because party politics makes a good deal more out of spoils in large communities than in small, and because of the tendency to build up a machine, permitted by great population.

Judge Thomas: There is not much chance where the board appoints the chief officer?

Dr. Forshay: I have seen some pretty good machines built up in the department of health.

Mr. Guerin: I would like to ask the doctor one question: The purpose of including the health department in the merit system, is, in the first place, to secure persons who are qualified to perform the duties, and secondly, the removal of that department from politics as far as possible. I will ask you whether, in your opinion, a board for the conduct of the merit system, appointed by the governor, a bi-partisan state board, having jurisdiction over each of their departments in the state

of Ohio, would not remove that more remotely from politics than a Board of Directors of Public Safety in each city appointed by the mayor?

Dr. Forshay: If honestly executed, I think it would.

Mr. Guerin: I will ask you further whether or not you do not consider that a State Board, so appointed, which is conducted on the line of the merit system in the Postoffice Department of the National government, making a special study of that subject, giving all their time and attention to it — if they would not have a better idea and a more intelligent idea as to the qualifications required for members of that department, than a bi-partisan city board, appointed for a short term of years?

Dr. Forshay: I should think they would.

Dr. Probst: I shall be glad to have Doctor Warner, a member of the State Board of Health, address us next. Dr. Warner.

Dr. Warner: Gentlemen — I think it would be well for Dr. Probst to state to the committee, in a few words, the workings of the Board of Health as it is. I think from some questions, perhaps the members do not all understand the Health Board system as it has been in operation for the last ten years. Very briefly the doctor will explain this.

Dr. Probst: Mr. Chairman, and Gentlemen — The operation of the Board of Health, under the present law, is briefly this: The law creates a board of five members, as stated, and requires them to meet once a month, and at such other times as they may deem necessary. The law authorizes this Board of Health to make such rules and regulations for the abatement or suppression of nuisances, and for the control of infectious and contagious diseases as that board may deem necessary and expedient, and when those are adopted, published and recorded, they have all the force and effect of ordinances of the cities or villages. The law requires this board to employ a health officer, who is the executive officer of the board. It is the duty of this officer to enforce the rules and regulations made by the local Board of Health. There are two classes of regulations that should be understood, to show the functions of the board. The board adopts what is usually called standing orders and regulations, which are orders of general effect that apply to all the places, or all the citizens of a town, alike; these have to be published, the same as ordinances, before going into effect. These the health officer may enforce without further action on the part of the Board of Health. But the board may adopt special orders to meet any special case, when an epidemic may appear, or something of that kind, that requires particular rules and regulations. Then it is necessary for the Board of Health to

hold a meeting and adopt such measures as they may deem necessary, and the health officer, or the executive officer, will see that these are enforced, or put into effect. That is about the operation of the Board of Health, except in the keeping of its records, which is done by the clerk.

Mr. Guerin: While Dr. Probst is on his feet, I want to ask a question. I want to ask your opinion and your judgment on the proposition that I laid down a few minutes ago, of having the heads of departments of the city, who hold office for three years, each one of whom is continually kept advised of the physical condition of the city, in his department, have them act as a Board of Health — what objection is there to that?

Dr. Probst: The objection, in comparison, would be that these men, while they have, or may have, considerable knowledge of the physical condition of the city, may have slight knowledge of sanitary laws and regulations. The man who is willing to give his time and attention to the duties of the Board of Health, and who would certainly comprehend those points, would certainly be more fitted to attend to such affairs, than would a man who was elected for some other purpose.

Mr. Guerin: Carrying out the statement that you made a few minutes ago, that your Board of Health was, in its nature, a board of executive officers, and supposing that the executive officers, and all other employes of that department were under a strict merit system, or civil service, I will ask you whether it is not better that the members of that Board of Health should be in such a position, leaving the executive part of the business to the executive officers, that they should be in such a position, that they have absolute knowledge, at all times, of the physical condition of the city and community, and that in their official capacity, that is a part of their duty, to advise with the executive officer of the board, whether you would not have better results?

Dr. Probst: No.

Mr. Guerin: Then you would, if you should pick up a professional man, who may be advised as to sanitation, but who has his own business affairs to look after, and if you would not find, in such event, that his acting as a member of the board was simply a secondary consideration?

Dr. Probst: I should hold the directly opposite view. I want to correct the impression that the Board of Health is merely advisory to the health officer; the Board of Health is, in fact, executive, in the sense that it makes any order it chooses, and the health officer acts as the hand of that board in carrying out those orders; he is executive to that extent.

The Board of Health adopts a certain measure, and says to the health officer, "You enforce it."

Mr. Guerin: Let me go one step further and ask you if you have not found, both on the state board and in local boards, where they have competent executive officers, that the action of the board is very largely controlled, in the making of its orders and regulations, by the suggestions and advice of the executive officer?

Dr. Probst: Oh, I think that is largely true of any relation of men.

Mr. Guerin: I will ask you if it is not particularly true on the State Board of Health?

Dr. Probst: You ask some member of the State Board of Health, who is present.

Mr. Guerin: I think we will all agree on that proposition.

Mr. Price: Is it not better that the Board of Health should be so constituted that it should not have any of the duties of looking after the financial interests of the municipality thrown upon it?

Dr. Probst: I think so, yes.

Mr. Price: The Board of Health that must look after the finances of a municipality will not be as free and as independent as one that is not required to look after those finances — is that your judgment?

Dr. Probst: I think that would be true.

Judge Thomas: Doctor, under the law as it is now, is it not true that certain local boards of health have taken upon themselves to adopt rules and regulations to quarantine certain towns and public places, one against the other?

Dr. Probst: That arises quite frequently, in some epidemic.

Judge Thomas: Is that a power, in your judgment, that ought to be lodged in the local board of health, or in the State Board of Health?

Dr. Probst: Well, I think it is a power that should be granted to the local board, but that it ought to be very largely controlled by some authority; it is liable to very great abuse.

Judge Thomas: Would you advise some amendment in the present law, in that respect?

Dr. Probst: I think so, yes.

Judge Thomas: Is the present Board of Health law such a law as was advised chiefly by the present Board of Health of the State?

Dr. Probst: The present law was drafted by the State Board of Health, and was then submitted to a representative committee of the various boards of health, some 35 or 40 men, who were called on account

of their long experience, and the bill finally approved, after some amendment.

Judge Thomas: This particular part I now speak of was not specially called to the attention of the state board at that time?

Dr. Probst: No.

Judge Thomas: Would you be willing to have prepared and submit to the committee an amendment to the law embodying the view that you have spoken of now, so as to give — while it gives the local board the right to adopt regulation of that kind — so as to give the controlling power to the State Board?

Dr. Probst: I shall be very glad to submit a measure of that kind.

Mr. Guerin: I will state to the gentleman that he will find that in House Bill No. 14, if he will look for it. Doctor, I want to ask you, from your experience and observation, and from your knowledge on the subject, if you do not think that the State Board of Civil Service Commissioners, which has the conduct of the entire merit system of the state, in making that a study, part of the duty of which board it is to obtain from the state officers and the local officers of every department of city government under their control, a statement of the needs, and the requisites that a man should possess in order to entitle him to hold a position, and obtain from them a list of the persons to be employed, and the nature of their employment, and advise, for instance, with your State Board of Health, as to what subject should be covered in the civil service, and the nature and extent of the examination,— if you do not think that examinations conducted by that State Board would furnish the local health department better and more efficient and more thoroughly qualified men, than under a civil service arrangement conducted by a bi-partisan board of four, appointed in each city by the mayor, and if, at the same time, you do not think that politics would be more remotely removed from your department, than it would under the bi-partisan board I have just mentioned? Do you understand me?

Dr. Probst: Well, I think —

Judge Thomas: Mr. Chairman, I object to the gentleman from Erie stating that question, on the ground that it may be competent, but not relevant to this particular subject.

Mr. Guerin: Both bills are under consideration.

Judge Thomas: It seems to me the gentleman is trying to project into this discussion some points in favor of another bill, when we are trying to arrive at some conclusion on this general subject.

Mr. Guerin: I would like to state that in House Bill No. 14, there is a department of boards of health, probably as fully set forth as in House Bill No. 5, and I do not see anything out of the way at all in my asking the question in reference to what is contained there.

Judge Thomas: Oh, I will withdraw the objection.

Mr. Guerin: Mr. Thomas may think that House Bill No. 5, is the only one under consideration, and perhaps later, he will change his mind. If the Doctor care to answer the question, I would be glad to have him do so.

Dr. Probst: I do not think I am competent to answer a question of that kind. I want to say I should be greatly gratified if the legislature would give us a purely merit system for the health department; but there is one proposition that has come up here, with which I can hardly agree; that is, that should not include the health officer, that it should be all of the employes of the board of health below the health officer. You have to keep in mind that this general act will apply to the largest cities, and also to the cities of 5,000. Now, in those cities, outside of the board of health, there is practically no one to go under the merit system except the health officer; but at the most there would be a health officer and a clerk and a sanitary policeman, and the important part of the machine would be the health officer; he would be the man whose efficiency you would want to guarantee by any system that would place him in office, and keep him there; if there should be a merit system, it seems to me it would go to the health officer. I might say, in this connection, there is a bill before parliament, in England—and England is credited with being very progressive in these matters—and the proposition there is to maintain their medical officer of health, as they call them, in office until the age of 63 years, when they are retired upon pension, according to their terms of service; but the idea is to keep in office men who are fitted for that position, and the executive officers, and not merely the clerks and sanitary policemen.

Mr. Price: In a village, the health officer is the clerk of the board?

Dr. Probst: No, sir; the law provides that the board shall appoint a health officer and a clerk; it used to be that he was the clerk, but is not so now.

Mr. Price: Do you think those two ought to be kept distinct, in villages?

Dr. Probst: There is no particular object why; I think in villages the health officer might easily be the clerk.

Mr. Denman: Doctor, in conducting civil service examinations, would it not be necessary for the board to ask many questions to qualify the applicant, questions as to conditions prevailing in the particular cities where he might be expected to serve?

Dr. Probst: I think a part of his examination should be of that nature.

Mr. Denman: Do you think that could be as well done by the State board as by a local?

Dr. Probst: Do I feel that the State board would not be as well informed as to local conditions?

Mr. Denman: Yes; as to the extent of the examination, such as will determine the qualifications of the applicant for the particular city, as could the local board?

Dr. Probst: Oh, I see no reason why the State board should not conduct the proper examination of a health officer for any locality; there may be some peculiarities, but these are general rules that would apply to every city and village in the State, that the men should be acquainted with.

Dr. Warner was, at this point, introduced by the chairman and addressed the committee as follows:

Mr. Chairman and Members of the Committee: Without attempting to consume but a little of your time, I simply want to speak along one line, in the consideration of this code, and that is the appointment of the local board of health, rather than to have a board of public safety or of public affairs, acting in the capacity of a body appointing the executive officer to act as health officer. I believe that in the conduct of the office in that way, you will more nearly get this question of public health out of politics. Public health is a thing that concerns us all, and I see from the trend of your remarks that you are as anxious as we are to get public health boards are largely as possible out of politics. Now, then to take this matter away from one of these boards of public safety or public affairs, and appoint a board of health, I believe you would more nearly accomplish that end. I recognize the disadvantage of a multiplicity of boards, of having a board for this and a board for that, but here is one of the places where I believe will do better to have a separate board of health. It is better because we are getting it more concentrated and centralized, in the first place, and then it is more nearly away from politics. These men are giving their time and attention to this question of public health, and they will make a more extended study of the question, then,

whereas, if it is in the hands of the board of public affairs, or the board of public safety, or service, the attention of the members of those boards is drawn too much to the fire department and to the police department, and the public improvements in general, instead of coming right down to the point of the preservation of the public health.

Now, for that reason, or for these reasons, I believe we will do better to come right to the point and appoint these officers in that way. Something has been said here about the question of the executive work of a board, or the executive work of the officer, or if the work of the board is not largely legislative. In a measure that is true, but in a special way, whenever the question comes up of public health, of importance to be decided, then the executive officer of any of these boards no longer acts simply by the general rules made by that board, but the board steps in and makes a study of the situation, and not alone says what the health officer shall do, but acts in an executive capacity, not alone to order what shall be done, but to take hold and help it, as well. I believe that by the appointment of a board of that kind, there will be apt to be less interference with the officer performing these duties. We have had a little something of an experience of that kind, in our town, Columbus, where the director of public safety appointed the health officer, or rather, found him already appointed, and desired to get rid of him on political grounds; there were no objections to him as an officer. There was considerable friction there, as most people know, simply for the purpose of getting rid of the health officer, and not looking to the best interests of the city. Finally, the resignation of the health officer came, and while there was a very competent man appointed in his place, yet that is not always the case, and the people would not always be so fortunate.

I think, Mr. Chairman, that is all I have to say.

Mr. Silberberg: Would you advise those appointments to be made by the mayor of the city?

Dr. Warner: While possibly there would be some objection to that, I do not see that there would be any better plan.

Mr. Silberberg: Whom do you think should appoint?

Dr. Warner: I think, by the mayor, probably, would be as well as any way.

Mr. Stage: Is it your idea that the State Board of Health should be medical men, entirely?

Dr. Warner: No; I should like to see one doctor on the board; but I believe it would be better, possibly, to have a lawyer and possibly an engineer — business men, but not all doctors.

Mr. Stage: Would there be any members of the community who would so well understand the preservation of public health and sanitation, as medical men?

Dr. Warner: In certain phases of it, better; an engineer, in certain phases of the question, would understand better than a doctor; certain phases of sewage and drainage, for instance. Then there are certain phases of the situation that a lawyer added to the board would be of great advantage, in that many of these questions have legal aspects, and the board has not a fund upon which to draw to secure legal advice, and they are sometimes in the dark as to just how to proceed to take hold, fearing their course will not be legal; so that, for that reason, the appointment of a lawyer would be a step in the right direction.

Mr. Hypes: From your statement and the experience that you have undergone in Columbus, I infer that you would recommend that the health officer should receive his appointment from some source other than the police department?

Dr. Warner: Yes.

Mr. Hypes: Would you recommend also, that the Board of Health and health officer be entirely divorced from the head of the department acting as the Health Board, and that the Board of Health be renewed and maintained entirely through appointment, having no other duties to perform?

Dr. Warner: Just as largely as possibly so; yes.

Mr. Willis: Would it meet with your approval, if the Comings Code — the health law that was passed last winter, if that should be amended so as to be a general law — would that be satisfactory, in your opinion?

Dr. Warner: Perfectly so.

Judge Thomas: In view of the trouble we had over this question, I would like if Dr. Probst would have prepared and submit to us, such an amendment as is desired, so that we could consider it in the committee, giving to the State Board of Health the matter of the right to control quarantine.

Dr. Probst: I shall be glad to do that.

Dr. Probst: I would like to call, next, upon Dr. Osborne, of Cleveland, and it is very fitting that he should speak to this question; Cleveland has a health officer appointed under some other department; they have no Board of Health. Cleveland is now suffering very severely from an epidemic of smallpox, with 70 or 80 cases a week reported, and they feel the necessity of a Board of Health being created; so much so, that they feel compelled to seek assistance; in other words, the Academy of Medicine in Cleveland was requested by the authorities to appoint four of its members to act as a Board of Health to counsel with the city health officer as to what could be done to meet this emergency, showing, as it seems to me, the failure of the old plan. Dr. Osborne, of Cleveland.

Dr. Osborne: I am very glad, gentlemen of the committee, that Dr. Probst has emphasized this point. We have been in Cleveland, rather inclined to the federal plan, with a mayor and appointive heads of departments, feeling that we could fix the responsibility for the proper discharge of public duties. Our health department, or health division of the police department, is not pleasing the medical men of the city, exactly. I think that a year or two ago, we should have been clamoring, if for anything, for a continuance of the federal plan, but with a department of health independent, the same as the department of the police or the fire department, or public works, etc., and we still believe that that is a good method, but our recent experience has rather confirmed us in the notion that the best thing we could ask for our city would be a Health Board. This is the position I was brought to. I have not been a doctor over four or five years, I have not had extensive experience, but in discussing the matter with Dr. Ashmore, a man of fourteen years' experience in this kind of work and the study of it, serving at least ten years of that time on a health board, and with Dr. Henderson, and in conversation with our own health officer Frederick, we adopted not exactly, resolutions, but I was given instructions to urge that we have a health board for the city of Cleveland, to consist of a certain number of men, perhaps five, who shall serve without pay, they to appoint a health officer, he to receive a salary commensurate with his duties. Our experience of this last week or two has shown us some of the weaknesses of the single head of such a department as that of health, with all due respect to Dr. Frederick; he has never been exceeded in absolute devotion to his duties, and has worked indefatigably night and day to do the best possible for the city. We felt that a year ago, had he had other advice on the subject

of vaccination, we might never have been involved in the trouble we have had; we felt it could hardly have been possible, had he had other advice with reference to the subject. But finally, a week ago, at his request, the Academy of Medicine came to his assistance. Dr. Forshay's statement is true, that the representatives from Cleveland are not representatives of the health department in any way. But, as I say, at his request, measures were taken to get some important things done with reference to the vaccination of school children, the looking after the public schools and the vaccination of those in large manufacturing plants, and we think that Dr. Frederick realizes the value of having some advice in carrying out the details of his work, in the presence of an epidemic, such as we have been having, as to the regulations governing these things, vaccination, and certain rules of conducting the smallpox hospital. He has come to us frequently for advice, and I think he is convinced of the value of having a body of men as a sort of advisory board, to go to, when necessary, and to counsel with. Now, possibly, had we not observed the matter as fully as we did, we should have been disposed to urge that the composition of the committee be a little more largely composed of doctors than now; as a matter of fact now, we think one representative of the medical profession would be all that is desirable for the committee. Ashmore's experience covering 12 or 14 years in Chicago, was that a committee composed of two doctors, a civil engineer and a plumber — that it was manifestly superior and satisfactory, and highly educating to every member of the committee, and that it resulted well for the city, and I think Dr. Probst can bear testimony that in Cleveland we have accomplished something in the last week or two. And so, from Cleveland, we are prepared to take the position that the other gentlemen representing the medical profession throughout the state, hold, in favor of the extension, simply of the present system, which covers all except six municipalities of the state — that of a Board of Health appointed by the mayor, in deference to our friend from Urichsville, confirmed by the council of the city; that, I think we should have no objection to, although my instructions do not cover that point; that such a Board of Health could and should be extended to every municipality of the state — I think I have nothing further to say.

Mr. McKinnon: I would like to ask the doctor if he would think it proper that the Board of Health should appoint the health officer, independent of any other body whatever?

Dr. Osborne: Yes, I should think so; the act of confirmation might be desirable, but the appointment should be in the hands of the Board of Health.

Mr. Worthington: Is it not the law now that members of the Board of Health shall be appointed by council?

Dr. Probst: The law provides they shall be appointed by council, but as a matter of fact, in nearly all places, the mayor says whom he would like to have; in other words, he nominates and the council appoints.

Mr. Worthington: I will just say that after six years in council, that our council has elected the Board of Health, and it has been very satisfactory.

Dr. Probst: I might say, just in response to the question, that the reason has been, perhaps, that the mayor has appointed, of course with the consent of council, acceptable men. That provision, that the mayor should appoint, is conformed to as largely as possible in this code, which distinctly says that the council shall make no appointments, except for its own body, and we made that change to conform with the code, just simply changed it from the council to the mayor.

Mr. Worthington: In my judgment, I would rather see the appointment made by the council, with the experience I have had, and the trouble there has been between council and the mayors.

Dr. Probst: I should not object to it, if he were appointed by the mayor and confirmed by council.

Mr. Worthington: That would be better.

Dr. Probst: Dr. Smith, representing Cleveland, is here, as representing one of the cities that has no Board of Health. He will speak to this question.

Dr. Smith: Gentlemen of the Committee—We possibly are all agreed on the first point I shall make, that the Board of Health should be as far as possible divorced from politics; politics, as we all know, is an unsanitary thing on the face of it. (Laughter.) Especially the politics of the opposite party. (Laughter.) Our own party politics, you know, is always all right, but the other fellow's politics is always unsanitary.

The question of health we consider of such vital importance, that it is our belief that it should be entirely divorced and freed from party politics and party influence, and from party prejudice, and from party pressure; so that our Boards of Health, our health officers and employ-

should be as far as possible divorced from politics; and that of course is provided for where the Board of Health is appointed for each city, and thereby, while the health officer is himself the executive officer of the Board of Health, yet the Board of Health will divide and share the responsibility, at time, with the health officer, and will give him advice, stiffen his backbone when necessary. I might say a word or two in regard to the health officer being under civil service, as well as the subordinates. An executive officer often meets opposition, and he often must confront circumstances that for the time being are unpopular, and in execution of the ideas of sanitation, he will often be placed in embarrassing positions. Unless he feels that his tenure of office is secure enough to keep him in office until the wisdom of his course has been demonstrated; so that I would like personally to see the health officer, as well as the subordinates, placed under civil service. In that way, it would cause the health officer to devote more time to making himself familiar with the duties of his office, and it would enable him to reach out a little beyond the present condition of affairs, because he would see that what today may be unpopular, is necessary, and it gives him a tenure of office sufficient in which to put into operation things that he would not touch if he felt that his position depended upon temporary popularity.

Judge Thomas: I want to ask a question there: Suppose that the health officer of a city, appointed as you think he ought to be, with a long tenure of office, should come to the conclusion that the best way to fight smallpox was by fumigation and not by vaccination; how are you going to reach a health officer of that kind?

Dr. Smith: There should be some board that would determine those things, or some authority, rather.

Judge Thomas: It would be hard work to reach an officer of that kind, if he were sure of his office, and took the view that it was not necessary to vaccinate.

Dr. Smith: The board, in cases of that kind, should have authority to remove.

Judge Thomas: You think there ought to be the power of removal?

Dr. Smith: Yes, for cause.

Judge Thomas: Would it be the best remedy for a case of that kind, do you think? Removal?

Dr. Smith: Yes.

Mr. Willis: Doctor, is Cleveland one of the cities that is exempt from the general operation of the Comings law that was passed last winter?

Dr. Smith: Yes, it is.

Mr. Willis: Then, Doctor, in your judgment, it would be satisfactory, would it, to extend the general law to Cleveland — it would be satisfactory to you, would it?

Dr. Smith: Yes, sir.

Mr. Price: What is your suggestion as to the line of demarkation between the employes and the officer? If the health officer, as you term him, is an officer in fact, there would be some question about being able to put him under the merit system.

Dr. Smith: In what way?

Mr. Price: From the fact that the whole theory of our government is a limitation on the officers. This may not be applicable to cities; I do not say that it is; it reads this way: "The election and appointment of all officers, and the filling of all vacancies not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as directed by law." And there is another section that gives the General Assembly, in cases not provided for — which says that they shall fix the term of office, and it says the compensation of all officers; — I do not claim that that is altogether applicable to municipalities, but reasoning from that, that that is true in the state, it is a question whether an officer of that kind could be put under civil service rules?

Dr. Smith: My idea was this: That the Board of Health is the head of a department, and the health officer is an appointee of the board, and for that reason, could be put under civil service the same as any other.

Mr. Price: My version of it is, that the duties of the Health Board are more on the legislative line; they can make their by-laws and ordinances elastic, and yet, they are really the legislative body in the health department; then you have an officer who is really the executive officer, and while you can do those things, you do them in harmony with the executive head?

Dr. Smith: So are the sanitary officers executive officers; it is the same thing; they come under the general rule.

Mr. Price: The sanitary officer — what are his duties as distinguished from the health officer?

Dr. Smith: He is the officer acting under the direction of the health officer.

Mr. Price: The responsible head is still the health officer, over him?

Dr. Smith: Yes.

Mr. Price: And the sanitary officer becomes an employe, rather than an officer. Of course, you can use the word "officer" in reference to him, but the court would look beyond that; he is an employe of his superior and could properly go under civil service; I do not say that the other could not, but I doubt it.

Dr. Probst: Mr. Chairman, perhaps it would be well at this time, if we would present to the committee the specific amendments that have been proposed. We had a preliminary meeting this morning, and talked this matter over, and I think you see what the nature of the amendments will be. There are one or two points that should be explained, however.

In drawing up the amendment it was thought wise to amend the Code; that was thought wise because we understood that nothing but Code matter was going to be considered. If, however, there should be an opportunity to take up measures other than the Code measure, a very simple amendment could be made to the Comings law of last winter, which would place it in harmony throughout the state.

Judge Thomas: I would like to have that part of the code amended in regard to quarantine; if that could be incorporated, I would like to have it done.

The Chairman: That can be made as a recommendation from the committee.

Dr. Probst: I want to add a few words to what has been said. When the State Board of Health was created in 1886, the local boards of health were confined to a few of the large cities; a majority of the small cities and some of the villages had boards of health, but there were no boards of health in the township. The first thing that was done was to get an amendment to the law requiring that there should be a board of health in every city and village beyond 500 population. Up to that time, the law was simply that the council might adopt a board.

The next amendment was in 1893; it extended to the townships, making the trustees of every township a local board of health, and having no limit on population. That went into operation. One difficulty that we had under the general law, and one that I would like to have the committee consider, is, that it operates well except in some of the smaller villages. In a village of 300 or 400 or even 500, there is quite

a difficulty at times, in finding fit men, or five fit men, who are willing to take the duties of members of the board of health. So that the Comings Code, or the Comings act of last winter provided that in villages of 2,000 inhabitants or under, may elect, if they choose, to appoint a health officer; that health officer, however, to be confirmed by the State Board of Health, further providing that this officer should have the power of a board of health, except that rules and regulations made by him that are to be of general application, must be submitted to the State Board of Health, in order that the state board may act as an adviser, instead of a local board. That served the purpose very well; that was only passed last winter, and we have already had to approve 20 or 25 health officers for small villages. I am now asking whether you can preserve that classification of 2,000, and come within the constitution, and if not, whether you should give that permission to any village, to appoint a health officer?

Judge Thomas: I think probably that would have to extend generally over the state, giving the privilege of doing either way. If it applied only to certain villages, and not generally, I fear it would be unconstitutional.

Mr. Worthington: Last winter we had some smallpox in our town, and there was a period of two or three weeks or a month that we were cut off from everybody; we were not allowed to go out or in, though we had the cases quarantined alright and under control. The consequence of that was, that our town was paralyzed for a month. For some cause, the officers would not give their consent to have the quarantine lifted,—that we could not get done, and I do not know what power was exercised by the board of the township, and what their motive was, we cannot say. I think that was an injustice, the business of the town suffered greatly. I think there should be some provision whereby the state board should be able to lift a quarantine, where they are satisfied the conditions warrant it, as they did in our town. Does this provide for that in any way.

Dr. Probst: No; as the state board is nowhere considered in this code, and is not a municipal body, I am not quite sure how I can propose an amendment to your municipal code. But if, on the other hand, you take up the law of last winter, then it could come in very properly.

Mr. Worthington: Could that be so amended as to provide for that, that the state board, after making an examination into the conditions, could lift the quarantine?

Dr. Probst: The state board has some authority in that direction, and I think it would be perfectly proper that it should be enlarged to meet some of the worst cases that come up. I will now say I think that could be done safely.

The amendment we have to offer to the code, I will now take up. It is that after line 916, on page 36 of the code, the following be inserted:

"The mayor shall appoint a Board of Health of five members, who shall serve without compensation, and a majority of whom shall constitute a quorum; the mayor shall be president by virtue of his office. The term of office of the members of the board shall be five years from the date of appointment, and until their successors are appointed and qualified. except that those first appointed shall be qualified as follows: One to serve for five years, one for four years, one for three years, one for two years, and one for one year, and thereafter one shall be appointed annually. Provided, that in all municipalities now having a Board of Health, in place of the two members of such Board of Health whose term of office shall first expire, one shall be appointed for five years; in place of the two members of the board whose term of office shall next expire, one shall be appointed for two years, and one for three years, and in place of the two members of the board whose term of office shall thereafter expire, one shall be appointed for four years, and one for five years, and thereafter one shall be appointed annually; and where such Board of Health fails or refuses to appoint a health officer, the State Board of Health may appoint such officer, in accordance with the provisions of section 2113 of the Revised Statutes, as amended May 7, 1902."

That only applies to cities; to harmonize that with the present code, it would be necessary, commencing on page 42, section 95, to strike out all down to line 1092, in that line striking out all but the following words: "The Board of Health shall have,— reading from that on.

Mr. Hypes: Dr. Probst, these suggested amendments to the present code would re-enact all of what is known as the Comings Health Code, as passed at the last session of the General Assembly?

Dr. Probst: It would.

Mr. Hypes: And this code, as I understand, was prepared by the State Board of Health, was it not?

Dr. Probst: Yes.

Mr. Hypes: And it was ratified by a meeting of some thirty or forty men, health officers, from different portions of the state?

Dr. Probst: That is correct.

Mr. Hypes: In your opinion, then, Doctor, the present code which you propose to re-enact into this code under consideration, would be perfectly satisfactory, not only to the State Board of Health, but to all of the local Boards of Health, so far as you have information?

Dr. Probst: I believe so; I think it represents the best thought of the various health authorities in the state.

Mr. Hypes: With the possible exception of a minor change or two in regard to the quarantine regulations.

Judge Thomas: It would be necessary to extend some of these sections here; they except Cleveland and other cities; it would be necessary to rewrite some of those sections?

Dr. Probst: It simply says, under "cities," that the "mayor shall appoint a board of five members."

Judge Thomas: Then you would repeal the section where it limits the operation of the law to certain cities?

Dr. Probst: That was a question I wanted to refer to the committee as to whether it is necessary to repeal it, or whether the general phrase "not inconsistent with this act," would apply.

Mr. Price: If this goes into the code, the code does not take effect until April, the spring election. The present officers acting as the Board of Health in cities, will continue to act, under the suspension decreed by the Supreme Court. Of what use in this amendment is all that follows after the word "annually," as you have it there? These boards are to be appointed after the municipal election, under this section?

Dr. Probst: Yes.

Mr. Price: If this does not take effect until next spring, the difficulty that you try to obviate, will be obviated by the reorganization under this statute, and the first part of that will apply?

Dr. Probst: The object of the amendment is, that there shall be no disorganization of the present Board of Health; we have boards organized throughout the state; if you strike out everything after "annually," it means the mayor will appoint new health officers, even down to the clerk, and that means a reorganization of the health department. This amendment simply retains the present men in office, providing that the terms, as they expire, shall be replaced by one member, thus making a board of five.

In section 99, line 1145, it takes away from the Board of Public Service the right to employ district physicians, health and sanitary officers. We have stricken out the words in that line — “physicians, district physicians, health and sanitary officers.”

Then under line 1331, on page 42, which makes practically the same provision for the appointment of a board of health in villages as in cities, we add the following, after line 1331 :

“The mayor shall appoint a Board of Health of five members, who shall serve without compensation, and a majority of whom shall constitute a quorum, and the mayor shall be president by virtue of his office. The term of office of the members of the board shall be five years from the date of appointment, and until their successors are appointed and qualified, except that those first appointed shall be qualified as follows: One to serve for five years, one for four years, one for three years, one for two years and one for one year, and thereafter, one shall be appointed annually. Provided, that in all municipalities now having a board of health, in place of the two members of such board of health whose term of office shall first expire, one shall be appointed for five years; in place of the two members of the board whose term of office shall next expire, one shall be appointed for two years and one for three years, and in place of the two members of the board whose term of office shall thereafter expire, one shall be appointed for four years and one for five years, and thereafter one shall be appointed annually. Provided, further, that the council of any village may, by resolution, determine that a health officer shall be appointed for such village in lieu of a board of health. In such case, the mayor shall appoint such health officer, subject to the approval of the State Board of Health, whose salary and term of office shall be fixed by council. Such health officer shall have all the powers and perform all the duties granted to or imposed upon boards of health, except that all rules, regulations or orders of a general character, and required to be published, made by such health officer, shall be approved by the State Board of Health; and if the Board of Health, or mayor, fails or refuses to appoint a health officer, the State Board of Health may appoint such officer in accordance with the provisions of section 2113 of the Revised Statutes as amended May 7, 1902.”

Mr. Hypes: Will you please state to the committee about how many men are now engaged under various boards of health?

Dr. Probst: We have a health force in Ohio of about 12,000 men, and one of the main features of the work of the State Board has been

and will be, to educate these men. They are coming into office as new men, and a large part of the work of the State Board, is answering questions of these men, regarding the duties of the Boards of Health. We have had in the last ten or twelve years, meetings, annually, of the representatives of these boards; at the last of these meetings, we had more than 400 of the representatives; many of our health officers have been in office twelve to fifteen years, and some of them more than twenty years; but if you enact this code, with the public service feature and the three years term, we will probably never see another health officer who would be in office longer than three years.

Mr. Denman: What is your idea with reference to what supervision the Health Board should have over the collection and disposal of garbage, whether or not it would be a good plan for the Health Department to have the power of disposing of it?

Dr. Probst: I think that would be highly desirable; it is very essential that cities should be kept clean of the garbage and other filth that accumulates in a large city. The system in vogue in some cities of letting this out by contract for the collection or disposal, or both, has seemed to be the policy. I think the health department itself should have full charge of the collection and disposal of garbage.

Mr. Denman: Is there any provision made in the Comings code with reference to that?

Dr. Probst: Under certain restrictions. Section 2142 as amended, answers it in part, perhaps not as fully as it should be. It does not authorize each Board of Health to maintain a disposal plant, but simply to look after the collection of the garbage.

Mr. Denman: I did not have in mind disposal plants; I have in mind the disposal of garbage, getting it out of the city, taking care of it generally, and the power to control this disposal plant, and say what is necessary.

Dr. Probst: That is authorizing the board of health, by authority of council, to make contracts and look after the collection of garbage.

Mr. Denman: Don't you think that ought to be within the power of the board of health, independent of council?

Dr. Probst: I think it would be desirable, yes.

Mr. Silberberg: We are trying to condense all the statements you have made, and I understand you to say that if we struck out of the Comings code, or bill, the classification of cities, that would be satisfactory?

Dr. Probst: Yes.

Mr. Silberberg: Why are you offering an amendment then to the code?

Dr. Probst: Because, as I stated, this was brought up under the impression that nothing but the code would be considered, that anything else would not be considered; it is only since coming here that this has been made clear to us, as to the old law, by the questions that have arisen here.

Mr. Morrow at this took the floor and spoke as follows:

Mr. Morrow: I would like to say one word about giving the board the power to dispose of their garbage; that would probably apply to cities of the first and second class only. Coming down to villages of 3,000 or 2,000 and under, it is something that belongs to council; but if the board of health had absolute power to go to these men and say, "You must remove that garbage," and then could compel it to be done, you would it would be better. You could then dispose of it without any further legislation on the matter at all.

Dr. Probst: I had expected to ask Dr. Coleman to address you; he is the bearer of a message from the Academy of Medicine, of which I am a member; they had a meeting within a week or two, and their legislative committee was instructed to say to this committee that they are in favor of continuing the present board of health plan. I am sorry Dr. Coleman is not here, but I give you the message.

Dr. McCollm is here from Uhrichsville, and will speak for the smaller towns.

Dr. McCollm: Mr. Chairman and Gentlemen: I don't know that I can say anything more than has been said in regard to the present health force of officers. I can speak for my board of health at home, which is appointed by the council to serve without compensation. I have interviewed each one of those members, individually, six of them, and they unanimously say that anything that can be done to keep the public health service away from politics, is desirable. We have at present in our board of health, two grocers, two clothing men—or rather, one clothing man and two dry goods men—and a coal dealer, and I am satisfied that if it were a political office, not one of those men could be gotten into the public service. It is a matter of public pride now, in a town like ours, to be on the board of health, and it is a matter not to be proud of, to be in politics. We feel that anything that can be done to keep the board of health work just as it is, greatly to be desired.

I am here as a representative officer, of seven years' experience, perhaps, and what little I know of the work, I know at the public expense; they have paid my expenses here to Columbus several times to attend these State board of health meetings, and they have paid for books on sanitation that I have been permitted to read, and if I am of any service as a health officer, if I am worth anything in that line, it is because of these things. Then I have all the bulletins and the advice sent out by the state board of health, which has been a great help to me. Now, to make a law that will allow some new administration to come in, and perhaps change all this, we think, cannot be a good thing. I cannot very well speak for myself, because I am the party that is directly interested, but it is an argument that is used by our board of health. We have two Democrats and four Republicans on the board, so that it is not much of a political machine; they serve without pay, for the good of the public health of the community.

As I said in the beginning, I cannot add much to what has already been said; but my board of health instructed me to say to this committee that they feel it would be best to leave the board of health work alone, as far as practicable and consistent with the constitution; they do not see the good of changing the present law.

The Chairman: Your village is what size?

Mr. Morrow: It is within a hundred or two of 5,000.

The Chairman: What do you consider the proper size of a board of health; how many members?

Mr. Morrow: Five members.

The Chairman: How, as to a village of 1,000 or 1,500? Would three be enough?

Mr. Morrow: Well, I think that would depend a good deal upon the character of the men they would get. I presume, in a village of that size, it would be hard to get five men of the character proper for a board of health, and the same thing applies to professional men; you go into the smaller villages and it will be hard to find five medical men that will work together.

Mr. Worthington: Do you think the council should appoint, or the mayor?

Mr. Morrow: The council; I think that is much more desirable.

Mr. Worthington: I want to say, in a town of about the same size, that we have a non-partisan board. The town has almost 500 Rep-

lican majority, yet we have both Democrats and Republicans on the board, and get good results.

Mr. Morrow: Well, last spring, because of strife in the Republican party, a Democrat was elected mayor. He immediately proceeded to get in as many of his political friends as he could, and he tried to replace the health officer with one of them; but on finding that the law provided that council shall appoint, and the board of health should then ratify, he went about it in that way. He made a list of appointments and council promptly turned them down and appointed the man I speak of, on the board of health. Then the mayor, pursuing the same policy, tried to get rid of the health officer and clerk, calling a meeting and stating that the purpose was to employ a health officer for the coming year. The board after considerable discussion, employed the same old officer at about double the salary. So you will see, gentlemen, it makes me feel very friendly toward the present plan.

Dr. Probst: Dr. Chapman, a member of the state board, is present, and will speak, and we would then like to have Dr. Marten, of Cleveland, who introduced the discussion, close it.

Dr. Chapman, of Toledo, will address you.

Dr. Chapman: Mr. Chairman and Members of the Committee — I have not much to say in addition to what you have heard this morning. I know, from an observation of the boards of health coming under my notice, as a member of the State Board of Health, that the health force of the state has never been in better condition than today. I think it will be great calamity to overturn all of what has been done. It is proper that I should state here that it is my opinion that the health officer should be an educated man in his line, and fortunately, we have such a man.

If the bill can be so amended — which may be a question — as to retain these same officers, all well; but I think, as one or more of the speakers has said, that we should be perfectly satisfied with the adoption of a few amendments to the present health code, as it was passed by this legislature last winter. Now, in regard to villages: I think that ought to be ruled out as 2,000, and say cities and villages, or class legislation will come in and you will have trouble. I hope this can be amended so that that amendment may be carried out.

In regard to getting men: There is no trouble to get good men for positions on the board of health in cities of large size; they become infatuated with the work; they are men of enterprise and public spirit,

and I think by all means the board should be kept out of politics; it should be a special board, and you will have no trouble to get men without compensation, the very best men, who will serve without any pay. Being without compensation, it is an honor to serve on a board of that kind. I am heartily in accord with the remarks that have been made, and especially with the resolution that has been offered, and I hope you will find some way whereby you will not have to do the injustice of overturning the present department throughout the state, by turning out those men who are well informed in their line of work and doing good service.

The Chairman: We have but a very few moments more, but if there is anyone here who has been sent as a representative of a board of health to present its views, the committee will be glad to hear from him.

Mr. Waltz, from Deshler, came forward and spoke as follows:

Mr. Chairman and Gentlemen: As a member of our board of health, I am heartily in accord with the views that have been presented here. We find we are doing very well in our town under the present system of the board of health, which, with us, is composed of one lawyer, a doctor, and the remainder, business men. We meet once a month, as provided by law, and discuss different things that are brought before us, and consider measures that will be conducive to the health of our community. Our health officer has charge of the town as a whole, and takes care of that part of it, and it is well done.

I don't know that I can add anything more to what has already been said in regard to this part of the matter, but we feel, as a board, that the present system is very efficient and that we are doing very well thereunder. Our town has about 2,000 inhabitants.

Mr. Silberberg: How many members are there on your board?

Mr. Waltz: Six members at the present time; we are working under the old law, and we find that it does very well and we have no fault to find.

Mr. Price: I simply wish to say that the mayor of Nelsonville, Mr. Hickman, is here, and he is satisfied with the provisions of the board of health, and also, I will let it go into the record, that they desire that the limitation be put at 10,000, as between cities and villages, or else have more flexible machinery than is provided for cities.

W. S. McCauslin, of Steubenville, came forward and spoke as follows:

Gentlemen — I do not know that I can add anything to what has been already said, but I desire to say this: That our people are going

under the old law, and are all well satisfied with it, but if the amendment can go in, as presented by Dr. Probst, we would very much prefer that to be done; that is, the appointment of five members of the board, by the mayor.

Judge Thomas: In section 95, or the latter part of the section, it says: "The Board of Public Service, acting as a board of health, shall have all the powers and perform all the duties, not inconsistent with this act, which are conferred or required in sections 2116, etc., naming them. Now, I would suggest that Dr. Probst can just as well rewrite this section, and make such amendments as he desires, or as will answer, and have that incorporated, either in this bill, or whatever bill may be adopted or reported. Or that he can make such amendment to the present law as will answer or are necessary, in his judgment. For instance, he can extend the general laws to all the cities in the state; otherwise, you would probably have to introduce another bill, to make the amendments in these sections that are suggested here. I think if Dr. Probst could be directed by the committee to prepare and rewrite these sections, it seems to me that we could embody that in whatever code we may adopt.

The Chairman: The Doctor is willing to do that.

Mr. Morrow, of Ada, came forward and spoke as follows:

Mr. Chairman: I was just going to say one word for these gentlemen here. My friend, Willis, is from my town, and we were born and raised and worked together, and we know each other, and he knows what the conditions are in our town.

I was thinking, while Dr. Probst was talking here, of the wonderful interest he has manifested in building up the State Board of Health for the protection of the health of the people. Annually that board sends to each health officer of the State a request to meet here in joint session with the State board, which we have done a number of times. My town has sent me here at the expense of our people, to learn what could be done for the protection of the health of the people against disease. I have taken some and published the information I have gathered here, on the subject of the public health.

Gentlemen, there is not a municipality in the State that has come here, asking you to remove any health officer, complaining that he has not done his duty. We have no trouble, except to get men to serve who have the ability. I do not know that I have so much, but I try to discharge my duties, and we have guarded our town. We have a school there, of large numbers, and health is a question of great interest to us.

While we have been surrounded on every side by towns having an epidemic of smallpox, we have only had to report two cases of that disease, owing to our watchfulness, and being on guard night and day. I say this, because it takes experience to look after these things, and we hope you will not adopt any measure that will result in overturning the present system.

Mr. Hypes: Mr. Chairman, I move that Dr. Probst be requested to rewrite section 95, and such other sections as pertain to this matter, and present them to this committee for further consideration.

The motion was seconded by Judge Thomas.

Mr. Price: It does not matter very much which way you go at this, it affects the code. The first way is to amend the Comings Code, and that is perhaps the best way, because you get rid of material on the statute books. I am willing that Mr. Comings shall introduce another bill, and then you have got something that looks like educated men have been working on it. Judge Thomas, as a codifier of law, you will have to say it would be far better to get rid of and eliminate the dead matter on the statute books.

Judge Thomas: If he will rewrite this, and incorporate such parts of the Comings law as apply, we can repeal the Comings law, and accomplish the same thing.

Mr. Price: There are other provisions in the Comings law.

Judge Thomas: Yes.

Mr. Price: Now, by a little amendment of that one section, you can get rid of the dead material on the statute books, and you put the statute in nice shape, and if it should be eliminated, you have it all under one code, and I presume that is better from every standpoint. I will say frankly that I would like to see what we do here reflect some credit upon our ability as codifiers, and eliminate some of the dead material from the statute books, rather than to put more on.

Mr. Willis: It seems hardly necessary to discuss the wisdom of the two policies here. It is perfectly proper to ask the Doctor to prepare two different sets of amendments; one for the bill now under consideration, and the other, the amendments he would suggest to the bill of last winter.

On motion, the committee recessed to 2:00 o'clock, P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

MONDAY, September 8, 1902, 2:00 P. M.

The committee met pursuant to adjournment, the following members being present:

Comings,	Denman,
Painter,	Hypes,
Guerin,	Willis,
Price,	Stage,
Cole,	Bracken,
Williams,	Ainsworth,
Metzger,	Maag,
Thomas,	Huffman,
Chapman,	Brumbaugh,
Silberberg,	Sharp.
Worthington,	

The Chairman: This afternoon we will consider the subject of libraries. Hon. E. O. Randall, of Columbus, will be the first speaker.

Mr. Randall: Mr. Chairman, and Gentlemen of the Committee:—My story is brief. Under section 227, sub-section 22 of the bill which is the working basis of this committee, you will find there is a provision to establish, maintain and regulate public baths and bath-houses, to establish, maintain and regulate free, public libraries and reading rooms, and to purchase books, papers, maps and manuscripts therefor, etc. In section 94 of the same bill the provision is made that the board of public service shall have the management of all municipal water, lighting and heating plants, parks, baths, libraries, etc.

In the city of Columbus we have two libraries, one established and maintained under the board of education, a free public school library, maintained by a tax levied by the school commission under the regulation of the tax commission and immediately controlled by the committee appointed by the school board. We have also another library, a free public library, which is created under the well-known section 1692 of the Revised Statutes, paragraph 37, authorizing and empowering municipal

authorities to establish and maintain free public libraries. Our library is managed by a board of four trustees appointed by the city council, two being appointed each year, and by custom the board has been a bi-partisan board for the past twelve years, thus divesting the board of any political features. We have never known politics there since that feature has been introduced.

This code wipes out the board of trustees of the public library of Columbus and places the control and management in the hands of the board of public service. We feel that that is an exceedingly unwise measure. More than that we feel that it is really an impracticable measure. We make the objection first that the board of public service would be compelled to immediately look after, directly look after the affairs of such a library. In other words, there is no intervening board of trustees, there would be no delegation of their powers to a board of trustees, but the board of public service would have to immediately appoint the librarian and the employes necessary to carry on the library. That, we think, would be imposing upon the board of public service with all their other duties a function that would not be looked after as it should be. Then, another feature which I think is worthy of mention here and of your serious consideration, is that perhaps of all the features of the code the board of public service is likely to be the most political feature of that full municipal system; and we fear if the public library is left in the hands of the board of public service it might receive the taint of political change and uncertainty, that a Republican board might appoint a Republican librarian and all attaches and when that board of public service goes out and a Democratic board comes in the contrary result would ensue. That is possible, that is likely in this feature, I say.

Therefore we make a plea for some provision whereby the public libraries as such may have a separate and distinct body of trustees, or directors, or managers — we do not care what you call them — to manage affairs in Columbus. Just now we are in a very critical and important situation. A year ago last January Mr. Carnegie gave our city, through our board of public libraries, \$150,000 for the establishment of a free public library. Our city council met the conditions of the gift by the passage of a resolution — that was merely a moral meeting of the conditions — pledging a certain amount annually for the maintenance of that library, and our city council recently purchased a lot of the

value of \$40,000, one of the best in the city, for the location of that library, and we have chosen a librarian.

Now, if that form of government goes into vogue and the matter is thrown into the hands of the board of public service which will come in next spring, we feel that possibly a continuation in the harmonious manner and in the manner outlined in the acceptance of that gift and the purchase of that property may be seriously jeopardised. Perhaps our first choice would be to have a separate department of public libraries appointed by the mayor, something like your board of public safety, to consist of four directors, or managers, or trustees; but I understand that one of the main lines of policy in this bill is to get away from a municipality of boards. Our suggestion is that section 7, sub-section 22, be made to read simply a little fuller and that that section be made to read something like this:

"22. To establish, maintain and regulate public baths and bath-houses; to establish, maintain and regulate free public libraries and reading rooms, and to purchase books, magazines, papers, maps and manuscripts therefor, and to receive donations and bequests of money or property of any kind for the same in trust or otherwise, and the council may by ordinance provide for the erection and equipment of the necessary buildings and for the custody, control and administration thereof by a board of trustees, and may confer upon such trustees such powers and authority as it may deem necessary in the establishment, maintenance and operation of such libraries by such trustees who shall have the power to adopt the necessary by-laws and regulations for the protection and government of the same. Said board of library trustees shall consist of four members, not more than two of whom shall belong to the same political party, and shall be appointed by the mayor to serve without compensation for a term of four years and until their successors are appointed and qualified, provided, however, that in the first instance two of such trustees shall be so appointed for a term of two years and two thereof for a term of four years; and all vacancies in such boards of trustees shall be filled by like appointment for the unexpired term; and municipal corporations shall have the further power to provide for the rent and compensation for the use of any existing free, public libraries established and managed by a private corporation organized for that purpose."

The Chairman: Have you looked over the sections which this would touch, as to whether they would need repeal?

Mr. Randall: I have to some extent. Of course, the word "libraries" should be taken from section 94. I understand this code will annul the entire section 1692.

The Chairman: But there are other statutes relative to libraries.

Mr. Randall: I would look after that.

Mr. W. J. Conklin, of Dayton: How about libraries organized under special act applying to a city of a certain grade. The trustees are appointed by the board of education, and the board of education owns the library building. We serve under the board of education. What effect would that have on us?

Mr. Randall: I don't think it would touch you at all.

Mr. Florizel Smith, of Columbus: There are general laws, some of which are in the school sections of the statutes, that authorize boards of education to establish libraries. In the suggested amendment Mr. Randall read those sections are not touched and boards of trustees of libraries that are operated under those school laws are not affected.

In regard to the by-law feature I doubt very much whether that power to pass the necessary by-laws and regulations ought to be taken away from control. Some of those by-laws and regulations would have to be enforced by penalties, and the fixing of a penalty, in my judgment, ought to be left with the legislative body, with council.

There is one thought that came to me and it will come to you all whether the Nash code passes or any other code passes, and that is in our large libraries in the large cities of the state and all other states you will find that the persons who are employed there must be educated for their positions through years of hard service. I think you will find it impossible to go into any large library and turn out all of the employes and put in new employes and subserve the public good.

We are particularly anxious to have paragraph 37 of section 1692 of the present statute left in the Nash bill or any other bill that the General Assembly may adopt, for this reason: We have in the city of Columbus in our library many thousands of volumes of books, we have many thousands of dollars of property that has been given to our library or our city that has been accepted by the city council upon the express condition that the administration of the public library shall be continued under a board of trustees under the existing ordinance or under the existing section 1692, paragraph 37. I am satisfied that if the Nash code should be adopted as it is, each one of the donors or their children surviving them will demand the return of the books and property and bonds

of which we are trustees. It is for that reason we are especially anxious that paragraph 37 of section 1692 be left intact. We make no plea whatever for our own political or official existence. We care nothing about that, but we do have the library interests of the city of Columbus at heart, and I think if Mr. Randall's suggested amendment is adopted it will give good service to all the cities of our state. It will not interfere with those libraries that are under the control of boards of education at all. It will continue those that are in operation under the general municipal law and it will permit any municipality whatever in the state of Ohio to organize and carry on a public library in a good way.

Mr. Price: Mr. Randall, that amendment goes to the root of the question that we have been considering, and you are the reporter of the Supreme Court?

Mr. Randall: Yes, sir.

Mr. Price: This says the council may provide by ordinance for trustees, which is the creation of an office. Have you discovered anything in the recent decisions of the Supreme Court that says that you can not do that?

Mr. Randall: I don't think that I have.

Mr. Price: You have those decisions in your custody?

Mr. Randall: I have, sir.

Mr. Price: Have you read them?

Mr. Randall: I have read some of them, some of them several times.

Mr. Price: You don't have any doubt as to the constitutionality of that?

Mr. Randall: I will not say I have doubts on any subject, for I don't have doubts, but it is my opinion that would stand. I think that could be done.

Mr. Price: I think you are right, most assuredly.

Mr. Worthington: Could the council have the right to provide for this library board and not have the same power to create by ordinance the office of prosecuting attorney or city solicitor?

Mr. Randall: I doubt that. There is a very great divergence among very many far better lawyers than I am; they differ very much. If you want my opinion off-hand I doubt if they could do that. Would your office of prosecutor be provided for and they simply to fill it?

Mr. Worthington: To be provided for by ordinance.

Mr. Randall: If the office was provided for, I think then the council or the mayor might have the power placed in them to fill that office.

Mr. Worthington: The reason I asked the question was that under the present law we may provide for the office by ordinance or the council may employ counsel for the village, and I think if we can have that in this code it would suit a great many of the villages. They would rather have that option to elect their solicitor or to appoint him by the council.

Mr. Randall: My understanding is that the statutes may provide for a recipient of your municipal authority and for the quantity of the authority to be placed in the recipient. You may do that, but further than that you can not go. In other words, you can not delegate a *carte blanc* power for a *carte blanc* office.

Mr. Worthington: Can we provide for the filling of an office in two ways, either by the council or by ordinance?

Mr. Randall: Could you give it an optional power?

Mr. Worthington: Yes?

Mr. Randall: Yes, sir.

Mr. Willis: It seems to me this question we have been discussing is a fundamental one. I would like Mr. Randall's opinion on another matter closely related to this.

Mr. Randall: I am here to advocate libraries.

Mr. Willis: In your opinion can we constitutionally say that council may provide for a board of public service, which, if created, shall have such and such powers?

Mr. Randall: That is what you have done, haven't you, in your code?

Mr. Willis: I want to know whether that is constitutional?

Mr. Randall: I am inclined to think it is.

Mr. Willis: Can we leave the creation of that board to council?

Mr. Randall: I doubt it. As I understand that question you have got to fix the recipient and you have got to fix the quantity of the power the recipient will receive, and you don't do that according to your question. I do not say I am right about that. That is my view of it.

Mr. Price: The head man in a fire department is considered an officer?

Mr. Randall: If not, can he put out a fire?

Mr. Price: If the council in the past has had authority and it has been upheld in the courts, to pass a law creating a fire department and thereupon proceeded to create the office of fire engineer, and the question

came up on quo warranto and it was upheld, does quo warranto bring the constitutionality of a law in question?

Mr. Randall: I don't think that has got anything to do with a public library in Columbus.

Mr. H. P. Junk, of Columbus: Mr. Chairman, and Gentlemen of the Committee:—As a member of the city council and a member of the library committee of the city of Columbus, I simply want to corroborate what the members of the board have said with reference to the library. The council is in hearty accord with the board and believes that this important question should not stand as it is in the present form. We believe that the library board should be appointed either by the mayor or the council. We feel that the library board is a great deal different than any other department of the city and should be entirely removed from political considerations.

Mr. Thomas: Does your amendment propose that the council shall appoint trustees and give them authority to erect buildings, or that the council shall have authority to erect buildings, and if so, how is the council to provide the means?

Mr. Smith: The council itself must first provide for a levy for a site and provide for the erection of the building. I take it that the council itself would have to adopt the plans for the building and after those were adopted it could entrust the supervision of the erection of that building according to those plans to these trustees.

Mr. Thomas: Do you think the council would have authority to levy any amount they might see fit to erect buildings for libraries under this amendment?

Mr. Smith: In making this suggested amendment we did not attempt to interfere with or change any of the provisions of the Nash bill touching taxation.

Mr. Price: You think this would be controlled by the other provisions?

Mr. Smith: No doubt in the world about that. In addition to that a bill that was passed by the General Assembly last winter authorized municipalities to issue bonds for a number of purposes, including the erection of a library building or the purchase of sites. That is the Longworth bill, and our library site was purchased under the provisions of that bill. Our bonds were issued under that bill.

Mr. W. A. Hopkins, representing the Cincinnati Public Library: Mr. Chairman and Gentlemen of the Committee: The board of trustees of the

public library of Cincinnati have taken the position that it is unnecessary at this time to offer any suggestion in the way of an amendment to the code as proposed, with possibly the exception of striking out the word "libraries" in section 94 and the insertion of the amendment proposed by Mr. Randall of the board of trustees of the Columbus library, applying to the municipal libraries. There is one other minor change in one of the other sections that they agree to, but they do not feel that it is necessary to take any other action or to change the proposed code so far as it relates to libraries. They are satisfied with the provisions of the code and believe that the proposed changes as suggested by Mr. Randall will cover the situation fully; that at this time you are not considering school district libraries but municipal libraries, and that at some future time when there is a code being prepared especially to apply to school districts they would be very glad to participate in a discussion of the subject.

Mr. Hypes: The Springfield library association have taken action in regard to pending legislation and have appointed a committee to present their views in the matter. Captain Bookwalter is here. He has been identified with library work there for some years and I ask that he be heard.

Captain Benjamin Bookwalter: Mr. Chairman and Gentlemen of the Committee: The board of trustees of the Springfield library represents a class of business and professional men whose services it would be impossible to obtain on any board that is likely to be appointed under this new code. The new code is providing for boards to manage the affairs of the city, including the public library, and I feel safe in saying that those boards will be composed of fair to good ordinary men and not the prominent business and professional men of the city, and there would be a good deal of politics connected with it. What the Springfield public library desires is to have a board appointed to regulate the affairs of the library which should be entirely free from any other boards. If the laws of the state provide that the board of trustees of the library, hospitals, etc. be independent of all others, you can safely depend upon obtaining the services of a class of men that is especially equipped to render good service in the management of those institutions and free of charge.

I have been connected with the library of Springfield for a number of years. This is my twenty-fifth year. I was elected by the city council each year, and it seems to have made no difference whether the council was Democratic or Republican, the library board has been composed of Democrats and Republicans. The employees of the library have always

been composed of members of both parties, but in no instance do I remember that the question of politics was ever raised.

Mr. Hypes: Governor Bushnell was appointed a member of the committee to appear before the committee of the legislature, but he telephoned me that because of illness in his family he would not be able to be present. But Springfield has another distinguished citizen who is interested in library matters in the person of Hon. J. L. Zimmerman, who wishes to appear before this committee.?

Hon. John L. Zimmerman: Mr. Chairman and Gentlemen of the Committee: In Springfield we are very proud of our public institutions, none more so than our public library and the manner in which it has been conducted for the last twenty-five years. Our library building was presented to us by Mr. Benjamin Warder, who erected it at a cost of \$100,000. The library has been conducted by a board of six members, appointed by the city council. The library board is opposed to making the change that has been suggested in this code. It is opposed to placing the library in the hands of the board of public service. We are in favor of putting the library in the hands of a committee to be appointed by the mayor, city council or board of education. I think under the provisions of this code, perhaps, as has been suggested by Mr. Price, that the council would not have the power to appoint a library board, but perhaps the mayor would have that power. I think that the board of education under a general provision would have the power to appoint a library board.

We want the board to serve without compensation. We have been able thus far in twenty-five years to secure the best men that we have had, perhaps, in the city of Springfield to act in that capacity. We don't want a partisan library board. We want a non-partisan board and we want a competent force and a force that has been trained, and persons who have, perhaps, given half their lives to that work. We don't care about having them turned out because some other political party may come into power.

Mr. Painter: Would you object to the board of public service appointing this committee or the trustees?

Mr. Zimmerman: I would object perhaps to that.

Mr. Painter: Why?

Mr. Zimmerman: For the reason the board of public service is an untried body. We don't know in the smaller cities what class of men will be elected or appointed to the board of public service. In a city of the size of Springfield we are apt to be able to choose one of our represen-

tative citizens for mayor and we are apt to choose for members of the school board men who are interested in education, and men who are on public service boards are sometimes not interested in the advancement of education.

Mr. Price: I do not wish to contend that the council could not appoint this board. There is a contention here that the council cannot create a board.

Mr. Zimmerman: I understood you to say the council here did not have the appointing power.

Mr. Price: That is as the bill stands. There is not any appointive power provided for the councils as far as I know.

Mr. Silberberg: How many members would you recommend be appointed on that board?

Mr. Zimmerman: Six.

Mr. Silberberg: In your city?

Mr. Zimmerman: Yes, sir.

Mr. Silberberg: Would it require more members in a larger city, like Cincinnati, for instance?

Mr. Zimmerman: No, sir.

Mr. Denman: Do you not think it would be better to have the board appointed by the library board?

Mr. Zimmerman: I did not think of that until I came over here to-day, because we have always had our board appointed by the city council, but I do approve of the board of education appointing that library board, yes, sir.

Mr. Denman: In Toledo our library board is appointed half by the council and half by the board of education, and we have always found that the members appointed by the board of education were men more peculiarly fitted for the place because they have the interests of the schools at heart and make that a part of our educational system.

Mr. Zimmerman: We have never had any trouble at all in our board. The men that have been suggested to the city council by our leading citizens have always been appointed.

Mr. S. L. Wykoff, President of the State Library Association: Mr. Chairman and Gentlemen of the Committee: The library people so far as we are able to gather them in, held a meeting at one o'clock at which they discussed two questions that I desire to state here separately. First, the question of libraries so far as the proposed code affects them directly by its provisions, namely, that class of libraries that are under the manage-

ment of the city council or the city government in its municipal capacity, and secondly, those libraries that have been organized and are managed by boards of education. The larger number of libraries represented here belong to the second class.

With regard to the first class I think that the statement that has been made by Mr. Randall is in the right line, supplemented by the statement that was made by Mr. Zimmerman, who just preceded me. We, so far as this code is concerned, concluded at this meeting of which I speak, that there ought to be four changes made in it, as follows:

First amend paragraph 22 of section 7, page 7, so as to read as follows, to-wit:—

“22. To establish, maintain and regulate public baths and bath-houses; to establish, maintain and regulate free public libraries and reading rooms, and to purchase books, magazines, papers, maps and manuscripts therefor, and to receive donations and bequests of money, or property of any kind for the same in trust or otherwise, and the council may by ordinance provide for the erection and equipment of the necessary buildings and for the custody, control and administration thereof by a board of trustees, and may confer upon such trustees such powers and authority as it may deem necessary in the establishment, maintenance and operation of such libraries by such trustees who shall have the power to adopt the necessary by-laws and regulations for the protection and government of the same. Said board of library trustees shall consist of four members, not more than two of whom shall belong to the same political party, and shall be appointed by the mayor to serve without compensation for a term of four years and until their successors are appointed and qualified; provided, however, that in the first instance two of such trustees shall be so appointed for a term of two years and two thereof for a term of four years; and all vacancies in such boards of trustees shall be filled by like appointment for the unexpired term; and municipal corporations shall have the further power to provide for the rent and compensation for the use of any existing free, public libraries established and managed by a private corporation organized for that purpose.”

Second, amend paragraph 9 of section 10 so as to read as follows, to-wit:

“8th. For school houses and university sites and grounds, and for free public libraries and free public library sites and grounds.

Third, amend section 38 so as to read as follows, to-wit:

"Section 38. The aggregate of all taxes levied by any municipal corporation, exclusive of the levy for county and state purposes, for schools and school house purposes, for free public libraries and library buildings, and for sinking fund and interest, on each dollar of valuation of taxable property in the corporation on the tax list, shall not exceed in any one year ten mills."

Fourth, strike ou the word "libraries" in line 1058 in section 94.

Mr. Price: Has the city council had power in the past to condemn land for library purposes?

Mr. Wykoff: I think that power is given by the Longworth act.

Mr. Price: The Longworth act is in force, even if this is passed.

Mr. Wykoff: The grounds for a separate library board have been well put and yet not too strongly put. The most learned, the most painstaking, the most careful, the most self-sacrificing men in the community are the men whom you want to put in control of the public libraries, and you could get them by an appointive board, but I hardly think it would be possible to get them by electing a board of public service.

The proposed code would affect very disastrously that class of libraries that look for their supply of funds to the levies that are made by the boards of education in Ohio. Take, for instance, all that class of libraries, and there are several of them represented here in this room, which have heretofore been acquiring their levy under a law which provides that a board of education in a city of a certain class may make a levy for a library that is free to the inhabitants or residents of the school district. When this classification of cities is wiped out by the adoption of this proposed code next spring the boards of education, when they scan the statutes, will find out that they are no longer required under the general law to make the levy. In other words, every library in Ohio, except two, possibly except only one, the city of Cleveland, depends for its levy upon the classification of cities. It does seem to me that when this legislature wipes out all that class of legislation it is going to work great disaster to library interests in Ohio if there is no compensatory legislation provided in some other act. I don't think it is possible to provide it in the code you are now considering. I think it is inevitable that it must be provided for outside of this municipal code. I ask you in the interest of public library extension in Ohio to carefully consider that question.

Mr. Willis: Would the last-named difficulty be remedied in part, anyhow, by the insertion of the word library in section 38?

Mr. Wykoff: No. That would only apply to municipal libraries, libraries that have heretofore been organized. That does not give the power to levy anywhere. That simply takes it out from the limitation of the levy in section 38. Otherwise the library levy all the time runs the gauntlet of the general limit, and the crumbs are very few that go to a library when we are parcelling out political preference.

The Chairman: Your idea is it shall be above the ten mills you levy?

Mr. Wykoff: Yes, that it should be independent of that question.

Mr. Price: Is it possible or feasible to take a municipal library as you call it and place it under the management of the board of education?

Mr. Wykoff: Yes, sir.

Mr. Price: And could be provide that the board of education of any municipality may levy a tax for the support of a library?

Mr. Wykoff: Under the management of municipality or under the management of the board of education? There are two distinct classes of libraries.

Mr. Price: I understand the legislature has the power to take the control of a school library out of the school board's hands and put it in the council. The council could handle it for school purposes. Or in other words, could we get one board which could levy that tax to suit both of those conditions?

Mr. Wykoff: My idea would be to have the board appointed in a uniform manner for all public libraries in the state, whether the libraries are municipal or whether they belong to the board of education. Have a board that would be appointed half by the board of education and half by some other body.

Mr. Price: Under the ruling of the supreme court you can give the council power to levy taxes and you can give the board of education co-ordinate power, but that makes two drains out of the city or village. I think you had better get together and do the best you can with that—there is only one time the transition or change must come—in order to harmonize these things; and there will be no objection to throw that power on the council or on the board of education so it is done by a uniform law; but it is bad business to have these two powers acting co-ordinately.

Mr. Wykoff: The power to levy, of course, may be vested in one body or the other. It can not be vested in both in reference to the same library.

Mr. Thomas: Do you desire that the board of education libraries should be levied for by some provision put into this bill for that purpose?

Mr. Wykoff: No; but when you have adopted this code you will have wiped out the classification of cities and therefore you will have made all of the general legislation authorizing a levy by the school boards and the various school libraries in Ohio.

Mr. Denman: Are there not several libraries in the state of Ohio the funds for which have been given by some person with the understanding that the library should not be governed by any political body or any person occupying any other political office?

Mr. Wykoff: There are. I know of one that would come under that description besides Mr. Warder's.

Mr. Denman: Then it would be impossible to combine the municipal libraries in that class?

Mr. Wykoff: There is another general class, of course, that falls outside of the two classes I have named, namely, that large class of libraries that exist by virtue of an incorporated library association. I suppose there are in Ohio twenty-five or thirty of that class of libraries that are free public libraries in the sense that they are open to the public without charge, and yet they are private incorporated library associations, and some of them have been drawing funds under the act of 1898, which provided that in a certain class of cities there should be a levy made by the board of education for the maintenance of that class of libraries.

Mr. M. J. Hartley, secretary of the State Library Association: Mr. Chairman, and Gentlemen of the Committee:—I represent the Xenia Library Association, a corporation organized not for profit, about the year 1881, which maintained a private library open to its subscribers until the year 1898, when a so-called general law was passed which is now in the Revised Statutes as section 4002, sub-divisions 46 to 49, inclusive, in which it is provided that in any city of the fourth grade of the second class in which there is a private library association conducting a public library the board of education of that school district may levy a tax not exceeding one mill on the taxable property for the support of such library. I ask you to take care of the interests of that library association, if you can, in the passage of this municipal code.

I have been instructed by the members of the Xenia Library Association to say that their sentiment is against the control of the libraries by boards of public service. Most of the members have expressed themselves as favoring the control by the school board. Their reasons are somewhat as set forth by Mr. Zimmerman and Mr. Wykoff and others here that the board of education will act along the same lines that they do in the appointment of teachers, recognizing that the library is an adjunct of the public schools, and that the proper place to put this educational factor is with the board that has control of the public schools, and not with a board that is selected for various purposes.

I might add a suggestion of this kind: That in any city in which a private library association is conducting a public library the corporation might be appointed a trustee to carry on, conduct and manage it. I am not sure that that would be proper, but that only occurred to me just recently. I think the sentiment of the people is that the control of the libraries should be left with the board of education, as it is now.

Mr. G. W. Mannix, of Greenville: Mr. Chairman, and Gentlemen of the Committee:—The library of Greenville was started by two of our citizens who donated the books and after consultation with the superintendent of schools, who was at that time Mr. Brumbaugh, a member of this house and of this committee, the board of education entered into an arrangement by which they provide a librarian, etc. Mr. Carnegie gave us a donation of \$25,000, the donation being made to the board of education, and Mr. Sinclair, one of our citizens, added \$10,000, which was given to the board of education. In our building we expended practically the amount donated to us, and under section 4002, sub-divisions 46-49 of the Revised Statutes, our board of education has levied a tax of three-tenths of a mill for the support of the library. According to the opinion of a great many people that levy would be absolutely illegal in view of the late action of the Supreme Court. We are here asking relief. We have a beautiful library which is almost completed. If the Supreme Court in striking down the classification of cities has taken away section 4002, sub-divisions 46-49, we would ask for some relief by which we might maintain our library.

Mr. Guerin: As there are a large number of libraries represented here, I want to read to the gentlemen a provision that has been inserted in House Bill No. 14, which is:

"To establish, maintain and regulate free, public libraries and reading rooms, to purchase books, papers, maps and manuscripts therefor,

to receive donations and bequests of money or property for the same, in trust or otherwise, and to levy and collect a tax, as other taxes are, not exceeding one mill on each dollar of the taxable property of such municipality, for the maintenance of the same.

"To levy and collect a tax, not exceeding one mill on the taxable property of the municipality, annually, and pay the same to a private corporation or association maintaining and furnishing a free public library for the benefit of the inhabitants of the municipality as and for compensation for the use and maintenance of the same, without change or interference in the organization of such corporation or association."

That is drawn in that manner to make it a rental from the city paid to the library association for the association permitting its books to have free and general circulation among the inhabitants of the locality. The object was to get around the feature of the old law that the courts have declared unconstitutional. There does not seem to be any question that the city should have the right to rent a library and pay a rental for it, and this tax which is levied to pay for a library is simply a rental for the use of the library for the inhabitants.

Mr. W. H. Brett, of the Cleveland Public Library: Mr. Chairman and Gentlemen of the Committee: I would like to enlarge on the statement that the secretary of the association made as to the number of duties that have been already assigned to these boards of public service. I find by actual count these boards have not less than 18 other important matters to attend to, besides a general clause thrusting everything else not otherwise attended to upon them. What a change of the kind proposed would mean, I think those who have given the conditions of libraries in this state some study will realize. It would mean a change from the control of boards which are usually more permanent than the term of the board of public service and are chosen from a class of citizens who usually represent the best professional and leading business men of the municipalities in which they serve. By the present plan the personnel of the board is retained no longer. This secures an appreciation of faithful service on the part of employes and the retention of the employes in the service irrespective of any changes in the political complexion of the state, and it also puts the library in the position not only to do the best service to the community, but to inspire confidence on the part of those who may be inclined to endow libraries, to provide for the building of libraries, to provide endowments for books and in other ways assist the libraries.

I know it is not at all necessary I should enter into an argument as to the value of libraries in the United States, but some figures as to the growth of libraries in the country and in the state may be of interest in this connection. In the United States in twenty-five years libraries have more than quadrupled. That is, in 1876 there were twelve millions of volumes in the libraries of the country. There are now fifty millions. The endowment in the hands of library trustees reaches twenty-five millions of dollars. The use of libraries has many times more than quadrupled and in Ohio has shared in that growth very largely. There are in the libraries of the state over two millions of volumes in 260 libraries, and those libraries are, as has already been shown to you, in three classes—the distinctive municipal libraries, the school libraries and association libraries

The effect of this section 94 would be to put all libraries except those which can establish their claim to be public school libraries and clearly not municipal libraries in the charge of the board of public service. It would have the same effect upon those libraries where a library association has performed a labor for the benefit of a municipality and is receiving support from the municipality for that service. That class of libraries, it appears to me, would be most admirably provided for by the clause which Mr. Guerin read in his proposed code.

I regard it as of the utmost importance in the present condition of library matters in the state that such action should be taken as would enable libraries to be continued an independent department of the city, a department which would be managed by its own board and such provision made for the selection of that board as will secure in the future, we have very largely in the past, the services of our best citizens in that board, services given freely and earnestly because they realize the value and importance of the work of the library to the city, services which could not possibly be rendered if the public library were in control of such a board as the board of public service.

Mr. W. J. Conklin, of Dayton: Mr. Chairman and Gentlemen of the Committee: All I am here to ask in behalf of the library of Dayton is that we be let alone. We ask for no special legislation. We are a band of brothers there. We have a library of which we are proud, that has been in existence for the past fifteen years, managed by a board appointed by the board of education. With all due deference to the gentlemen who have advocated the appointment by mayors or city councils, it

seems to me there can be no fact better established than that the library, which is distinctly an educational institution, should be allied to the educational department of the city.

We have a board of six trustees, two being appointed each year, who serve for three years. There has never been a question of politics or any other question before us except what is for the best interests of the library. So far as I know the people of Dayton are admirably pleased with the manner in which the library has been managed and there is no call upon the part of the public for any change. I am not pleading for a continuance of the present board or myself, but if you take the management of the library in Dayton out of the hands of the present trustees it will be a doubtful experiment, if nothing else. Our purpose will be subserved by the changes already suggested in section 94 and 38.

Rev. Dean Williams, of Cleyeland: Mr. Chairman and Gentlemen of the Committee: It seems to me that our position might be summed up very briefly thus: There are two questions of importance to the rights of the libraries here. The first question is the effect of this present bill, and it seems to be very plain to us that this bill imperils the existence of the libraries of the state. It imperils the existence of the libraries in two ways. First, there is the danger of neglect and mismanagement of the libraries of the state by putting them in the charge of a board of public service—neglect because those three men have more things than they can possibly attend to, mismanagement, because they are not apt to be men of sufficient intelligence, education and devotion to public interest to take care of such high matters as library interests. That is the first peril. On that ground we should like to have the word "libraries" stricken out of section 94.

The second peril which arises is the danger that the libraries will **not** have sufficient financial support. In section 38 the libraries are **lumped** with all the other public interests of the city for the support of **which** things a levy of not more than ten mills is to be made. In Cleveland a levy of thirty mills is made for such purposes and the library has **just** succeeded by hard work in getting eight-tenths of a mill out of that **levy**. That eight-tenths of a mill has enabled us to do extension work **which** we never could have done before. We have some thirty stations, **sub-**stations and branches and are establishing more, not only in the **public** schools but in the factories. If we are lumped in with all the other inter-

ests of the city on a levy of ten mills, I fear we shall come in for very few crumbs. We will have to draw in our extension work and it will imperil the very existence of a great deal of that work.

On motion the Committee then took a recess until 7:30 P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

September 9th, 1902, 9:20 A. M.

Pursuant to adjournment, the Special Committee on Municipal Codes of the House of Representatives, met in Legislative Hall, Mr. Comings presiding. The subject for consideration, as outlined by the program, being Boards and Chambers of Commerce, Municipal Associations, Builders' Exchanges and Taxation Commissions, Taxation and Assessment, and the general principles of Municipal Government.

On roll call, the following members were present:

Comings,	Denman,
Painter,	Hypes,
Guerin,	Willis,
Price,	Stage,
Cole,	Bracken,
Williams,	Ainsworth,
Metzger,	Maag,
Thomas,	Huffman,
Chapman,	Brumbaugh,
Silberberg,	Sharp.
Worthington,	

The Chairman: The Municipal Association of Cleveland, is represented by Mr. H. A. Garfield, who will now speak to us. Mr. Garfield.

Mr. Garfield: Mr. Chairman and Gentlemen of the Committee—I am sorry that Mr. T. H. Hogsett, who was appointed with me to address you concerning the code bill, is not here as yet; he will undoubtedly arrive later, but as we came from different directions I could not arrange specifically the time, and at the request of your chairman, and in order that somebody might be gotten out of the way, I shall endeavor to say to you what I have to suggest, or to report, rather, and I trust I shall not burden you with things that you have already heard and which have perhaps been very much better said. I labor under this

disadvantage in addressing you, namely, that I have been absent for several weeks on my vacation, and having, I think wisely, sought out a retreat where I was in touch with neither letters, papers or telegrams, I know scarce anything that has been said to you, and therefore, I may be repeating much that is already well known to you, and possibly even all that I shall say might as well be left unsaid.

In one particular, at least, I think I bring you news which has not been officially reported, if reported at all: The Municipal Association of Cleveland is an association purely voluntary. Some have asked by what right it exists. It exists by the right that every citizen has to express his opinion individually and collectively. It is a voluntary association which has undertaken to, in the first place, inform itself as to local conditions, and in the second place to convey to the public the information which it accumulates.

No sooner had this code proposition come before the people of the state of Ohio, by reason of the Supreme Court decision, than the Municipal Association put itself in position to secure information as broadly as might be. Immediately after the meeting of the Bar Association at Put-in-Bay, Mr. Hogsett, who is a member of the committee of three appointed by the Bar Association to assist the Governor, Mr. Hogsett, being also a member of the Cleveland Municipal Association, made a request in writing to our Association that it aid him in securing information throughout the State and beyond the borders of the State, concerning the present status of municipal corporations. Pursuant to the request, the Municipal Association set about accumulating the information; it got together a vast mass and amount of answers in response to printed questions sent out. It analyzed those answers without in any wise coloring the replies that were made; in fact, in the questions asked, the questions were so framed as that a bias would be created neither on one side nor the other. That is, we consider the two sides of the question, the so-called board plan and the federal plan of government. That information, together with editorials from all the papers of the State which had expressed an opinion, and substantially all of them had, was analyzed. That analysis was put in the hands of Mr. Hogsett, and all the data in the form of reports, articles, books that had appeared upon the subject in the last ten or fifteen years, were also furnished him, and he has that, had that, in fact, at the time when the Bar Association committee met to express its conclusion with reference to this matter.

The Association having discharged its duty in that respect, that is, for the time, inquired from the members of the Executive Committee what they individually thought upon this subject. There had been some indications, but purposely, we kept all that in the background. The Executive Committee of the Association, composed of ten members, expressed itself, without any hesitation, in favor of the so-called Federal plan, objecting, however, to the use of the word "Federal," but for convenience, and because it is understood, we will continue to use the term.

The General Committee of the Cleveland Municipal Association consists of a body of men, about sixty in number; that committee is the committee from which the Executive Committee is chosen, and at the request of the president of our Association, the secretary set about finding out what the individual members of that General Committee thought upon the subject. It being vacation time, and very many of those men being absent from the city, it was not possible to secure the opinions of all, but a majority was in the city, and I beg to report to you that of that majority not a single man expressed himself in favor of any plan except the federal plan, coupled with the merit system, and when I say "expressed himself," I do not mean that they merely said, "Oh, well, perhaps the federal plan," but I mean to say to you that, almost without exception, they said they had given some attention to the matter, and that they were emphatically in favor of the concentration of power, executive power, in the executive department in such manner as that the people of the city at large might put their finger easily upon the man to be held responsible; that they believed implicitly in that principle, in that measure of home rule consistent with the most progress, and at the same time make the proper limitations, placed upon the power of the executive; that in their judgment, that limitation was found in the fullest measure through the merit system and that, therefore, those two items are always present in their minds. In no case has any member of the Association, or in fact, any with whom we have talked, expressed himself in favor of any plan of municipal government with which is not coupled the merit system.

The members who make up the General Committee, and of course, the Executive Committee of the Association, are leading business and professional men of the city of Cleveland. Manifestly, it does not include all those representatives, and I think no one who is familiar with the interests of Cleveland, looking over that list of names, will say that it

does not represent and is not representative of that vast body of citizens, interesting itself chiefly in its own affairs, only within the last few years awakening to the necessity of paying attention to public affairs, and that when it speaks it speaks with an unbiased business opinion. It is not a political body in any sense; in fact, any member of that committee running for any office, by that very act ceases to be a member of that committee. The association has no political axes to grind, therefore, and when it expresses an opinion upon a subject it expresses it, because, viewing the subject from the standpoint of the best business interests, as they see it, of the municipality, they are of the opinion which they express. I think, gentlemen, that like the Chamber of Commerce of the city of Cleveland, it is not only representative, but it is unbiased in the opinion which it expresses to you.

Now, concerning the rest of what I have to say, it is but fair that I should announce to you that, there having been no meeting—there was no opportunity after my return, and it chanced that I am chairman and the president of that Association—there was no opportunity for calling together the gentlemen of the General Committee and explaining to them in detail the provisions of any code that has been introduced here, or that it is planned to bring to your attention—that, therefore, what I shall now say is my own personal opinion, and is only the opinion, also, of certain individuals with whom I have had opportunity to talk rather more at length than in other cases.

I have with some care read the so-called Nash code, and that introduced by Mr. Guerin, and it is manifest of course, as it is to all of you, that there is a striking similarity, in fact an exact duplicate, of provisions in the two codes, except in two very important particulars. When you come to the executive office, the executive department of the city government, the Guerin code provides for what is known as the Federal plan, and the Nash code for the board system; also, the Guerin code provides for the merit system, elaborated to considerable extent, and in the opinion of those who favor the merit system, would undoubtedly express much more nearly their view as to what the provisions regarding the merit system should be than the very meagre provisions of the Nash code.

I observe by this morning's paper that the Senate has adopted the Nash code as a basis; that is to say, they will begin with something, and they choose the Nash code as a basis for their discussion. I see, gentlemen, nothing but courtesy in that act, and I if I were a member

of either of these bodies, I should say, certainly, it is entirely satisfactory to me that we should start, in fact, I should prefer, as a matter of courtesy, to start with the bill that has been formulated with so much care and attention by the governor and those who have assisted him; but I believe that you will all agree, no matter what your preferences are, that the fullest and fairest discussion should be had of every provision of that bill, and that in that connection any of the other bills could be as easily discussed with that bill before you as the basis, as if no other bill were before you.

Now, why the differences, gentlemen, between these two bills?

It would not be seemly, nor would it be fair to this discussion, and I take it that the members of this General Assembly do not propose to allow, any purely political discussion to have any weight; I do not mean to say that it will not have any weight; we are all but human, and are more or less closely associated with one or the other of the leading parties, and I do not mean to say that that fact will not color our opinions, but I do mean to say that I believe, and I think the people of this state are convinced, that this General Assembly is going to consider this important question in the light of the fact that they are now proposing legislation that shall go down beyond any administration, whether in state or city, and that we are now here receiving and reviewing opinions which must be based upon fair, because well-digested opinions, concerning what a municipal code ought to contain.

Why, then, the difference—confining ourselves only to this really rational, meritorious consideration—which entitled it to receive attention?

There is a man, a friend of mine, of which I think a great deal, who is in favor of the Governor's code, so-called, emphatically in favor of it. I saw him yesterday and I suppose the line of argument that he advances is the line of argument that all advance, with reference to that code; they say, in the first place, by provisions with regard to the executive, in that code contained, you will avoid anything like dictatorial power vested in the hands of a single executive, and they bring to our mind Cleveland and Columbus as examples of what they term the unfortunate results of the Federal plan. The second argument is, that each member of the Board of Public Affairs acts as a sort of a watch dog on the other members; that there is that kind of superintending and checking of power and authority, that will result in the administration of affairs much more impartially and much more thoroughly, than is possible where you have a single head with full and very broad powers,

and lastly, they argue that it is more democratic; they argue this, gentlemen, that with the Board system we are getting back to the people. Now I suspect we all feel the same way about that matter of getting back to the people; we want to get back to the people, and when anybody advances that argument, it always has a certain disturbing effect, if our opinions are formed in a way that makes that argument seem counter. But let us analyze these arguments. With reference to the first, I say frankly yes, it does prevent dictatorial power; it prevents it absolutely, not absolutely, however, as it would be, if instead of three men, you elected one hundred men, or threw the whole question, whatever it might be, open to the people by a general referendum; but I say, yes, it prevents dictatorial power, it prevents the mayor from building up a machine, such as he can now build up in any city. Is that the only way to prevent it? What about this very merit system that Mr. Guerin has seen fit to put into his code? Is it not possible, is it not altogether probable, gentlemen, that with the merit system, a proper merit system, forming part of the municipal code, a code in which the executive power is vested in the mayor and heads of departments appointed by him, that the merit system will prove sufficient limit upon the power of the chief executive to prevent an accumulation of that dictatorial authority which results in the building up of a political machine? I clearly believe that it does, and I think that Mr. Guerin's code has so guarded that office, by reason of its provisions, with checks, as that the mayor will not find it possible to build up a political machine to any dangerous extent. But that is not the only way of preventing it; that is not even the best way. The best way of preventing dictatorial power in a municipality is by that kind of interest, on the part of every citizen, that leads that citizen to go to the polls and register his opinion. Now, do they do that under the Board system? Do they do that, even to the extent they ought, under the Federal plan? Why, it is manifest that they do not. When we get back to the people now, gentlemen, the people that we get back to are not, for the most part, the representative business men and professional men of the cities. It would be very far from my desire to make any argument based upon a division that should place upon the one side the great business interests, corporations, if you like, and upon the other side the mass of citizens of any city; but we all know that it is true that there is such a division, and we all know that it is true of affairs in our large cities, without any exception, that we have had corruption because the intelligent, educated men of the cities

have not paid attention to public affairs. Now, those intelligent citizens are not the big corporations, they are not the businessmen, in the sense that they are the wealthy, that they are the money power of the city,—not at all. What is our public school system for—what has it accomplished, gentlemen, if it has not been that it has brought the benefits of education into every home in our city? When I say the intelligent men of the city, I mean everybody, from the day laborer up, or down, as you choose to call it,—and I mean that that intelligent body of citizens must arouse itself, and has not heretofore, except on special occasions, to do anything like active service in the city.

Now, personally, I would rather have a board system—I would rather have a large board and every activity of the municipality conducted by the board, and at the same time have that kind of activity among all the voters of a city which shall bring every man forward, first to understand, and then to act, upon every question of public interest; in other words, if the whole body is aroused into activity, then I do not care what the form is, because the people will take care of it, and under those conditions, when you talk about the people, we shall be talking about that which President Lincoln was talking, when he referred to the people; and when we talk about the “people” nowadays, that is not what we are talking about, and it is nonsense to suppose it is. So that, fundamentally, the question would be,—will you secure greater knowledge and greater activity, if we have the Federal plan, or the Board plan, so-called? I want to say to you that what I am here to say is, that everybody with whom I have talked, excluding, always, those who are specially, for some reason, interested—everybody with whom I talked agreed that the Federal plan is easier to understand, that we can put our finger more immediately and more easily upon the responsible party, and that, therefore, the way being easy, the citizens take that way and are better informed and are more active in affairs than where they are under the old system.

That is true of the city of Cleveland. Is not that true of the other greatest city of our state, the city on the Ohio river? What do you gentlemen who are most familiar with the affairs in Cincinnati hear constantly? Some good reformer would come forward, and he will say, “Let us be rid of bossism and all that has to do with it.” What is the reply? The reply is, “Oh, well, we have had a very good plan of government under our present leader.” And that present leader, gentlemen, has been wise enough, whenever the important moment came

and he saw that power was about to be taken away from him by one of those sudden awakenings of public interest—he has been wise enough to put up candidates with whom fault cannot be found, to whom exception cannot be taken. That is his wisdom; that is not part of the system. That is not the way it is worked out in Philadelphia; that is not the way it is worked out in New York City. The fact is, that the board system tends to supineness on the part of citizens, and it is so, because of the very complexity with which the administration of affairs in a city under board rule are conducted.

This is a fair illustration: When the Municipal Association of Cleveland first set to work to consider these questions—not the code, but municipal affairs generally, what did we observe and experience? The most lamentable ignorance and lack of knowledge on our own part. If we wanted to see whether a certain sidewalk was put in properly, we actually did not know how to go to work to find out about it. We had to educate ourselves. When we went to the county—and you will remember that there are three commissioners elected very much as your Board of Public Affairs would be elected under the so-called governor's code—when we went to the county commissioners to find out anything, it was a perfect circumlocution office. When we undertook to do something with reference to reforming the administrative methods of that office, I tell you, gentlemen, we found very much more difficulty in accomplishing any results than we did in any office where the power was vested in one officer. When our representative went to the county office and talked to this or that commissioner of the three, we always found that it was the other fellow who was to blame and at fault, and we could not place the responsibility, and finally, when we issued a bulletin upon the subject of county affairs, we actually had to entitle it and make the substance of it an account of the administrative methods of the office. We could not say that this man, or the other man, or any one of the three, was entirely to blame. We did see that one of those three men held the reins in his hands and drove with a great deal of power and skill, and that while we could upset one of the inferior lights, when it came to that light, we had to stop; he put in a man of his own and that man went into office. Now, prior elections, we had thrown out, by the skin of our teeth, a man that was part of the system, but we had ourselves to acknowledge that that man was more the victim of circumstances and of the system, than he was of engaging in anything particularly corrupt on his own part.

Now, how was it when we came to city affairs? We took up city affairs and found certain things to be wrong and other things inefficiently done. We found politics had crept in to such an extent that there was building very rapidly a machine which threatened to administer everything, not merely city affairs, but state and national as well. But were we able to overthrow it? Were we able to so stamp it out so that it should not be able to raise its head again? We were. And we believe that it will not again be possible for anyone to build up such a machine. Why? Because the people of the city of Cleveland know just where to put the blame and just how to get rid of it, just how to get rid of the man that abuses the power committed to him, and they will do it whenever any man goes into that office and administers and uses the power of that office for the building up of his own personal interests.

I am not familiar with the affairs here in Columbus; it would be folly in me to try to say to you what is happening here; that is well known to you; but I think the illustration of the city of Cleveland is entirely a fair one, and I say to you that any one who goes into that office, at the head of the affairs of a city, and conducts it in such a way as to satisfy the majority of the people, even if it does not satisfy me—he ought to stay. The majority of the people must be allowed to speak, and if they are satisfied, even though the system be not a good one, it is their blame and they must bear the burden of it. We are a form of government republican and not democratic, and when we set our men up and they go about doing those things which they think are qualified to be not for the public benefit, but more for their own personal benefit, and we as a majority of the people, retain those men, then we deserve what we get, for the time being; but I tell you, from our experience, we know that we can overthrow the power, under this plan I speak of, because we can put our finger on the man to blame, and because of the simplicity of it all, the people will arouse to activity.

Now, what are the arguments in favor of the Federal plan, that those of us over in Cleveland would advise you of? (And again I want to say, gentlemen, that I must apologize for going over what has undoubtedly been said, and better said, to you.) We say to you, first there is a centralization, a concentration of Federal power. I have already acknowledged that it may lead to dictatorship, but I do not fear it, for the reason I have given, and we are glad there is a concentration of power—that is precisely what we want. If you are going to

accomplish anything here in this body, what do you do? Do you sit in committee of the whole, or do you appoint committees, and when it gets very acute do you not have committees and your sub-committees? What you do is to get down to the smallest number, consistent with a deliberative body. You want to get down just as close to a one-man power in the government of a village, as you can get, consistent, all the time, with the preservation of those things which stand for, and are, indicative of the liberties of the people at large. So there is concentration of responsibility, and that is what you want.

Now, secondly, we argue that it simplifies administrative methods. Manifestly this is so. If your three members of the Board of Public Affairs are to be watch dogs, as the friends of the Board system say, they will be upon one another. That cannot be carried out, gentlemen, unless you provide that not more than two of that board shall be members of the same political party, and I submit that it could not be carried out then. If you had two arrayed against the third, and looked to that third to be the watch dog, then you are in danger of so closing down upon the administrative activity, that you are not going to progress, or accomplish anything, and I say to you that the watch dog would not amount to anything; we set to work and got a watch dog for the county commissioners' office and he watched; that was all right; but that is all the good it did; there were some things he was able to trip up, some things he was able to send over word—a sort of a hurry call—to us to come at once, because it looked like something was going through; but it resulted in not accomplishing anything we wanted to accomplish, because all that he could do was to speak of some particular thing, and there was no real power of initiative in a board of three. Then another thing, too, we found in that board of three, constituted as the board would be under this plan, because you do not contemplate a minority of the opposite political party—it is proposed that we put three men in, and if the city goes Republican the three will be Republican, and if it goes Democratic the three will be Democrats. If the Republicans carry the city, the board will be of that party,—much they will care about Republican politics, perhaps, but they will be Republican in name. Now, what will those three men do? Why, they will not do very differently from the county commissioners. What did they do? I will tell you what they did in Cleveland. I do not speak with so much certainty of to-day, because we have been devoting our attention in the last year in other directions. We have, for instance, the matter of the improvement

of the highways throughout the county. We found that when we raised taxes, they made the allowance of certain improvements amounting to many thousand dollars, in fact, amounting to nearly as much as the original contract, without expending the money on the improvement. It was an outrage on the public. We found out, in investigating that matter, that those commissioners divided the city into three parts, like all of Gaul, and one was responsible for all of the appointments on the West Side, and if anybody was to be appointed, the other fellow had nothing to say about that; it was left in the hands of the man looking after that West Side. When it came to letting out contracts on the West Side, the West Side member of that Board of Commissioners had all the say about it, and the other fellows O. K'd. whatever he said. So with the other two, each in his particular district. It amounted, after all, to a division of power, and resulted in, as I say, the abuse of the administration of affairs in that office, which enabled each commissioner to say, "Why, that is what they have been doing for years; I didn't inaugurate it; I came into the office and found that thing existing; that is the way we conduct it; you can't expect three men to go over the same thing every time; we have got too much to do."

Now, is this Board of Public Affairs going to have much to do? Why, I would say, gentlemen, that they are to have a very great deal to do. Then you may answer me that if it is going to be much for three, it will be much for one; but the difference and the distinction is this: That under a single head, the policy to be pursued in the administration of the affairs of that office will be necessarily that of a unit, originating with one man; it is the head of a bureau, the clerks appointed under him, the heads of departments under him, will carry out in detail those things which that one head will lay down as the policy to be carried out; that policy, of course, first having been determined upon by the head. If you are going to conduct any business affair, do you pretend for a moment to say it is better you should have three men than one to conduct it? Why, manifestly, no. But the elusive argument is made to you, that we must conduct the affairs of the municipality on the line of business. All right; we will all agree to that; that is to say, of most business,—and they advocate the board plan here to you, comparing it to the corporation with its stockholders, namely, the citizens of the state; that the stockholders get together and select a Board of Directors, namely, your Board of Public Affairs; and that board conducts the affairs of the institution. Gentlemen, it does not.

How many of you are members of a bank board? Who conducts the affairs of the bank? I don't know of a bank in the state of Ohio that is run by a board. It has a board to refer to, but the trouble with all of those illustrations they make to you is, they have a false analogy. It is true to a certain extent; it is just true enough to mislead, and not true enough to be an example. The fact of it is, that in your business corporations, your board gets together and that board elects a president and manager. Your stockholders do not do it. Why? Because it is thought better to leave the matter in the hands of a board, or in the care of a board, and if you are going to follow the analogy, you would revert to the old system which was prevalent everywhere in the United States prior to 1850 or 1820, at any rate, of allowing the city council to appoint the administrative officers, and you would be conducting it on the same basis that the English municipalities are conducted upon to-day.

So that they are not proposing really to follow the strict business method in selecting these officers; but the people put in a mayor, and the mayor appoints his heads of departments, and they are then the responsible parties who are in management; they are like the president and general manager of your corporation, and the board plan is really only another barrier between the people and your executive power; that is, if the board plan should be adopted.

I have already indicated what I suppose all of you recognize, and it is the fundamental distinction that the affairs of our government are conducted upon the republican bases, and that we are not a democracy, and while that has not anything to do with this, I want to say to you, gentlemen, that I am absolutely opposed to the so-called referendum idea. The referendum, in our form of government, is the polls for the election of representatives to office. Now, so long as we adhere to the republican form of government, let us stick to it and put our representatives in and then hold them responsible. Now, what is the argument of the advocates of the board plan, about that? They say, "But you are departing from all of that when you allow your mayor to appoint the heads of departments." Not at all. Your board must appoint certain heads of departments. Is the board, or committee of three, going to act as such for the charitable institutions, for the hospitals, and the street repairs, etc.? No. They must appoint representatives to carry out their plans, to carry out those details. Is it better that the representatives should be responsible to a single head, or to a board? Of course, that

is a question for you to answer. But let us remember we are a republican form of government, and when we put our representatives in, let us hold them responsible. Of course, you can hold your board responsible and turn out a member, but let us have it so that we can put our finger upon the man, and not upon the method; because, when you have criticized the method, you have then to hunt around and find the individual responsible for it, and it is going to take you three times as long to get rid of a board, or the majority of it, as to get rid of a single head, provided, always, that the powers of that head are so limited, as they must be under the civil service, or the merit system, as to make it impossible for him to entrench himself, within the period of his term, in such a manner as to make it impossible for the people to throw him out.

Now, the Guerin code plan avoids certain faults that I believe to exist in the Cleveland plan. The Cleveland plan has never seemed to me to be ideal, and I will tell you wherein it has seemed to me to be wrong. In the first place, the mayor of the city of Cleveland has been given a seat in council and allowed to address it on any occasion he pleases. I do not believe in that.

The Guerin plan does not contemplate that; the Guerin plan says that the mayor and the members of the board shall, when called upon to do so, answer questions. At one time it seemed to me as if there ought to be a provision which would absolutely prohibit any of them having a seat in council, but I no longer think so, and for this reason: If that were true, the council meeting but once a week would be very much hampered in the prosecution of its business, because it must send a communication to the various heads of the departments, and await an answer; and then the answer, if only partially satisfactory, must be explained, and another week must elapse, and it would be very dilatory. So that I believe it is the part of wisdom to allow the heads of departments to be present in council, but not to address council, not to lead in debate, not to attempt to advocate any policy—leaving all that to council—but they shall be there for the sole purpose of answering any questions that may be asked of them by council, in its deliberations.

As the Cleveland plan is carried out, it is a subversion of the American plan in this: The Board of Control originates so much, and its members are necessarily so much better informed upon the affairs of the city than council, that it amounts to this: That whether a certain public improvement should be made, or a certain contract let, is de-

terminated by the Board of Control, and the council has only the veto power. That is wrong, and I think the provisions of the Guerin code avoid that difficulty.

Mr. Price: Do the heads of the administrative departments make any sort of a board under the Guerin code?

Mr. Garfield: I do not understand that they do. The provision is that the mayor shall meet the heads of departments at least once a week, for consultation; but they do not form a board in the same way. The mayor and his heads of departments form the Board of Control, under the Cleveland plan. Under the Cleveland plan, if any contract is to be let—say a pumping station is to be put in, how do they go to work? The Board of Control recommends it to council, and council acts upon this recommendation. So that if the Board of Control should see fit to so form its specifications and proposition for the letting of that contract, as that it should go a certain way, all the council can do is to veto it; and then they have to start over again. In this provision, that is not going to be possible; if it is going to be possible, then the Guerin code ought to be so changed that that will not be possible, in my opinion.

Now, I will close with just one illustration that is a pet one of mine, and that will perhaps tell the whole story better than all I have said; it is this: Who ever heard of a ship at sea being run by a board, and who ever thought of advocating its possibility? I certainly would not trust my life, or that of any of my friends on an ocean liner with a board of control, and I am very willing to trust myself, or any of my friends in a ship that is run by a captain, and he has very despotic power. He can hang me to the yard arm of his ship if I do not behave myself. Why is that wise? Because he has got to act quickly for the safety of that ship in any emergency, or at any time. Because he cannot consult about what ought to be done. Perhaps nine-tenths of the people on that ship would have a better opinion than the captain, but in case of an emergency, it is better that something be done and done quickly. Perhaps it is not quite the best thing, but whilst he would stop to consult, if the ship were on fire, about what steps to take to put it out, the ship is burning, or is going to the bottom.

That plan may have been all right in the New England town council; it was a little affair. everybody knew the councilmen; it could not make very many bad mistakes, but in our great cities, where probably not a single member of council is known to the vast body of citizens personally, there is not that kind of companionable touch between men

that impels them to act together in the same way they could in the New England village, and the result is, that the New England villages have been the very ones to abandon that form, that New England herself has abandoned the town principle plan when it comes to the large cities. I think I have heard people say, and possibly they have appeared before you, that the federal plan is substantially the plan of Cleveland; they have got it in Columbus, too. See how it works. It works badly there. Don't get into that snare. The history of it is, that in all our large cities, beginning with 1882, everywhere, when they have made a change, it has been to put more power into the hands of the executive. Philadelphia and Baltimore are about the only exceptions. I have made a little schedule of it. The cities that I have referred to, and the dates I shall give, will inform you as to which cities have centralized the power.

In 1882, Brooklyn, New York.

In 1884, New York City.

In 1890, Long Island City,

Ithaca,

Syracuse,

Utica.

In 1891, Cleveland and Buffalo.

In 1895, Boston, old, staid, town-meeting Boston, for most of the principal positions.

From 1895, down to the present time,—I do not pretend to have them all—Lowell, Holyoke, Quincy, Rochester, Albany and Troy.

That is to say, they are putting more power into the hands of the mayor. Now, what are you going to do, if you go back to the Board system? You are going back a great many years, back to 1850. It may be well enough to call your attention to the fact that at the very outset, our mayors had no power; they were simply a sort of a presiding officer. Council was everything. Gradually the powers of council were taken away, because public policy was not to be determined in a city, and they found that the administration was getting to be more and more the important end of government, and so the tendency is all that way, and I believe if you could take away—take entirely out of this question, the opinions of those who are actively connected with political leagues, that there would be but one opinion in the state of Ohio to-day—the summary of the opinions of over 200 gathered by the Association, indicates that beyond peradventure. There are a few citizens

in Cincinnati that say they are well enough satisfied with the board plan. Their reason, however, is the poor one I referred to in the beginning, "Oh, these people are doing the thing satisfactorily; it works very well, because Mr. Cox gives us a pretty good administration." I do not understand that in this country we are going to deteriorate, or that our institutions are based upon what any one man chooses to think is good for the city, but I believe that if our government is to continue a representative government, and if we are to avoid the very dictatorial power, or the dictator, which you hear talked about and used, if we are to avoid that, our only salvation lies in making it possible for every citizen, every intelligent citizen of our cities, to do his part, not in holding office, not in tagging around after a party in order that he may have some political pap—not that—but every citizen must be interested, and the form of government must be simple enough so that he may be interested; and so I bring up with the conclusion with which I started out, that the fundamental point, the fundamental thing, in my opinion,—and if I were a member of your body, that I would keep in mind—is, that we must have that form of government which does guarantee the largest measure of home rule; and the largest measure of home rule only exists when you have the largest number of citizens actively engaged in expressing their opinions at the polls, and expressing those opinions intelligently. I thank you very much.

Mr. Bracken: I would like to ask the gentleman a question. What do you think of the English plan of council taking charge of the whole affair? Hasn't it resulted in the people getting greater benefit, by operating their own public utilities?

Mr. Garfield: In my own opinion, sir, that is not yet proven. It seems to be proven, perhaps, with reference to some of the cities, but the conditions are so different, we could not say what would be applicable to those cities, would apply to ours. For example, in Glasgow; there you have a distinctly composite city, and the conditions are so different from those present in certainly all of our Ohio cities, that I have never felt it was safe to follow the example. The time may come in this country when it will be safe, but at the present, in my judgment, it is not. I do not see that the English system is one that we ought to undertake to adopt in this country; it does not fit with ours, at present. In other words, even if it were true that the system works well in Glasgow and Birmingham and Berlin, and in the other cities of Europe

and the continent, it does not follow, and we make a mistake if we think it necessarily follows, that the same thing would be true here.

Mr. Bracken: Do you believe that under municipal ownership it could lead to the corruption we have, such as you saw in this morning's paper from St. Louis, where the franchises are sold and bought in a corrupt manner?

Mr. Garfield: Personally, I have not yet been persuaded that municipal ownership is the proper remedy, under present conditions. I say to you that I can conceive that if our cities were under the merit system, and we had already attended to getting ourselves into shape on the administrative side, it may be that, personally, I should be willing to see the municipal ownership experiment tried; but I would be very unwilling, personally, to see it tried at the present time, under present conditions.

Mr. Price: Would you be willing—is it your judgment, that the heads of departments should be a Board for any purpose whatever, or should they not?

Mr. Garfield: I should say not; I see no advantages in it. Their departments are quite distinct, and the purpose as I understand it, of Mr. Guerin's code is, that the heads of departments should meet for consultation, not about each other's departments, but that they may inform the mayor as to how each is administering his own department.

Mr. Price: Take the Board of Public Safety, in what manner would the head of that department, or any department, create its subordinate position, below the board?

Mr. Garfield: You mean under the Guerin code?

Mr. Price: No, under the Nash code?

Mr. Garfield: It provides that the city council may appoint and provide salaries for such additional members of any department, or clerks or other employes, as may be found necessary.

Mr. Price: Then you pass a resolution —

Mr. Garfield: It is for the council to determine. In other words, whether in the fire department there should be 100 or 50 or 25 patrolmen; it is for the council to determine just how many men are necessary to operate the water works, or the hospital, or whatever institution it is.

Mr. Price: Again, suppose that the heads of departments were made a board, and the vice mayor, who also acts as president of the council, should be a member of that board,—wouldn't that be feasible?

Mr. Garfield: I don't see any advantage in it.

Mr. Price: I mean would there be any objection to making him a member of the Board, if we had the heads of departments to constitute a board,—would there be any objection to making him a member of the board and not the mayor?

Mr. Garfield: It seems to me that the mayor would be the proper man, rather than the president of council.

Mr. Price: The president of the city council would be at the council meetings?

Mr. Garfield: Yes; but when at the council meetings, if he would constantly have to be leaving the chair to answer questions, he would have to be presiding one minute and on the floor the next, telling what the board thought or did.

Mr. Price: Another question, a legal question, and if you don't feel like answering it now, take time to consider it.

Suppose that in a smaller city, like Nelsonville, about 5,000, suppose you create your departments and then add the section that the council in any municipality where it was appointed shall pass an ordinance consolidating one or two of those departments, giving the small city two heads of departments instead of three,—would you say a man could hold two of those departments, if the council so determined?

Mr. Garfield: Well, of course it would be foolish for anyone to undertake to answer a question of that sort without due deliberation. In view of the position taken by our Supreme Court, I should think it would be clearly unconstitutional.

Mr. Price: How do you interpret the decision of the Supreme Court? That is, do you interpret the decision of the Supreme Court that the legislature cannot empower the council to create an office, or in other words, set an office in force by an ordinance?

Mr. Garfield: I do; it seems to me that is the reading of that decision.

Mr. Price: What case is that? I can't find it.

Mr. Garfield: There are two cases, the Cleveland and the Toledo case; the two cases that were decided about the time of the Put-in-Bay meeting, or just prior. That is the Jones case, I think.

Mr. Price: With what provision of the constitution does that conflict?

Mr. Garfield: The constitution provides that the legislature can provide for the organization of cities; it then becomes a query, what is

meant by the word organization? Now, when the legislature undertakes to provide for the organization of private corporations, we all know that that corporation is not organized until it has taken certain steps laid down by the statute; and I presume therefore, by analogy, that the legislature should provide by law for the organization. You may say to me that in the private corporation, the legislature has seen fit to say that the corporation must have not to exceed fifteen, or less than five directors, thereby leaving it open.

Mr. Price: Does not the Supreme Court say that, as to whether there was anything in the Toledo act that violated Article and Section 6, they did not decide?

Mr. Garfield: They did not decide, no; I formed the opinion I had, simply because I believe that when presented to the court it will so decide; it is a matter that it will be an impertinence, however, for anyone to assume.

Mr. Price: I imagine the question came in this way: Indiana has decided that it is an invasion of the rights of local self-government to put the power of the appointment of the police in the hands of the governor. Under that Toledo case, that power was in the hands of the governor. Now, that is a mooted question whether it might not approach along that line, and whether the court might not have had that under consideration. Now, I will go a little further: Suppose that there is a line of decisions in this state, upheld in the past, simply the power of the council to pass ordinances setting certain machinery in motion, a line of decisions already in this state, of that kind, that substantiates that right, under general laws; would you say there was anything in the Supreme Court decision that meant to overrule that line of decisions?

Mr. Garfield: Oh, I should say in this decision, that is certainly not overruled; I think the Supreme Court purposely reserved that question.

Mr. Price: I will say to you that the question has been up in quo warranto proceedings in this court, likewise before Judge Maxwell, of Cincinnati, reported in the Bulletin, to issue an ouster, and one was on mandamus. The writ was issued; in view that those cases are standard and are under general law, and this decision of the Supreme Court, would you think it is desirable for this legislature to load up the smaller cities and smaller villages with a burdensome form of government, with those cases standing there, not touched?

Mr. Garfield: One would answer no to that, of course. But going back to that query is it a burdensome form of government?

Mr. Price: I helped incorporate a little municipality in our county; there are about sixty or sixty-two votes there. Now, they have not anything, except roadways through their village; they have no use for a board of public affairs; they have no use for a solicitor; they have no use for a street commissioner; and yet, under the code, as proposed, it creates all of this cumbersome machinery on that little municipality that wants to be organized simply for a little police protection against marauders.

Mr. Garfield: Where would be the burden? I do not quite follow you. Supposing, if our little village of Mentor, where I live in the summer, a few hundred people, only, there—it would certainly not need a solicitor; he might have the office, but our town council would not vote him any salary, though we might have somebody named as solicitor. The time has been when we would have been very glad to have referred something to somebody there, as a solicitor, and the result was, we had to hunt around for a lawyer, as for instance, when the street railway went through, and we needed the contract made with the railway. You could have the solicitor named, and I cannot see that the grating of the wheels of the machinery would smite anybody's ears, if we had a solicitor; he would not be paid anything. I quite fail to see where the "burden" comes in.

Mr. Price: They may pay him?

Mr. Garfield: Why, yes.

Mr. Price: They could create them, likewise. I asked you those questions, and I would like to submit those authorities to you.

Mr. Garfield: You refer to the Roberts law?

Mr. Price: No; I meant the decision of the quo warranto and the others, where the council set in force an office, and it was filled? I would like to get your judgment on these, if you care to look at them.

Mr. Hypes: I would like to ask a question. Mr. Garfield, one of the reasons you advance, as I understand you, favoring the so-called federal plan, as against the board plan, is, that it more certainly eliminates politics from municipal matters. Do you have, in connection with that plan, the merit system in Cleveland?

Mr. Garfield: No; there is a sort of a merit system in appointing of the police and fire departments, but it does not amount to very much.

Mr. Hypes: You have the federal plan?

Mr. Garfield: Yes.

Mr. Hypes: If I recall correctly, on yesterday, the statement was made on the floor of this house by physicians, that if it had not been for political interference, they could more efficiently have handled matters that came under the health department; if the establishment of the federal plan would eliminate politics, I wondered how it was possible for that to happen, under that plan?

Mr. Garfield: I think you could hardly have heard me correctly, or else I said what I did not intend; I do not think I ever said it eliminated politics; I do not believe I used that expression, because the truth is, I want a great lot more politics. I want to see that kind of politics that brings you and me and all the rest of us out to the polls, and gets us to vote intelligently.—But of course, Mr. Hypes, I know what you mean. I mean to say that I always try to avoid the expression, “eliminate politics,” because I like to use those words in another way. It is true about the city of Cleveland; we have not any merit system there, and I am not at all satisfied with the Cleveland system as it stands, for the reasons named, and among others, because it has not the merit system. The merit system which we have is only a partial one and partially successful, in the police and fire departments. With the true merit system I think the difficulty would be entirely avoided. I do not mean to say, however, that I regard the merit system as a nostrum for every ill, but I think it is a growing power.

Judge Thomas: I want to ask you if you think this would be in conflict with the constitution: “All municipal corporations which at the last federal census had a population of 5,000 or more, may become cities; all others shall be villages. All cities which at any future federal census have a population of less than 5,000 may become villages. All villages which at any future federal census have a population of 5,000 or more, may become cities.” Do you think a provision of that kind would conflict with the constitution?

Mr. Garfield: No, I don't think so.

Judge Thomas: Do you think that municipalities that have more than 5,000 might choose whether they would be cities or villages?

Mr. Garfield: Well, the question which you propose would seem to be constitutional. The Constitution itself says that the legislature shall provide for the organization of cities and villages.

Judge Thomas: I don't think you get my point, I will repeat this: (repeating the quotation in the question above:) It does not say they

shall be, but may be,—“all others shall be villages.” That is, they remain villages, or they may become cities, leaving it optional with them; do you think that is constitutional?

Mr. Garfield: I should think it would be much wiser to make that definite.

Judge Thomas: You do not quite answer the question. Is that latitude permissible, under the Constitution?

Mr. Garfield: The reason I think it is wiser, is because of the question, whether that would be constitutional, I am speaking offhand, of course.

Judge Thomas: Another question: The point I wish to ask you about is this: Cities and villages shall have power,—“To establish maintain, and invest with power, and impose duties upon the police department,”—the water department, the fire department, the street department, the prison and reformatory department, the financial department, the department of public safety, of charities, health, improvement, accounts, and such other departments and office as may be found necessary properly to carry into execution the operation of the powers herein delegated.

Now, do you think such a provision as that, leaving to the council, or any other body of the municipality, the power to erect and maintain those departments, would be constitutional?

Mr. Garfield: I would not undertake to answer that, sir, without looking into it further; it is a very difficult question, it seems to me, whether it would or would not. Is that provision in the *Guerin* or in the *Nash* code?

Judge Thomas: That is from Judge Okey's code, section 1 and 2 reading: “In addition to the powers specifically in this act and otherwise by law granted, cities and villages shall have the general and substantive power enumerated in this section, the exercise of which powers shall be provided for in municipal constitutions to be adopted by municipal conventions, as hereinafter in this act provided; but no city or village shall be obliged to exercise any of such powers,” then follow those I have mentioned, in form.

Mr. Garfield: It would seem to me that it involved this difficulty, what is a delegation of legislative powers. And it would seem to me as if that were a delegation of legislative power; but I would answer that with much hesitation.

Judge Thomas: That is more of a delegation of power than the legislature could delegate?

Mr. Garfield: It would seem to me to be so.

Judge Thomas: Would you be willing to answer this question: What legislative power, if any, necessary to carrying on the municipal affairs of a city or village, may be delegated by the General Assembly to the council?

Mr. Garfield: I cannot undertake to answer, because I have not been able to satisfy myself yet about that. I don't know. There must be a line somewhere, it cannot be cast-iron, but where the line is, I do not know.

Mr. Williams: I would like your idea, if you think a plan similar to the federal plan would be effective without the merit system?

Mr. Garfield: I would rather have the federal plan— — I was going to say, Mr. Williams, I would rather have the federal plan without the merit system, than the board plan; but I think the merit system is so important an item of either plan, and especially of the federal plan, because of its limitations, I would not want to leave it out. You are not to infer from that, that I would say that you can much better omit it from the federal system, than from the other.

Mr. Williams: In case of the board,—one of the criticisms here was that you could not easily get at their proceedings; don't you think if they were compelled to keep a journal, open to inspection, that could be seen?

Mr. Garfield: In the office of the commissioners I spoke of, they kept a record of all their proceedings, and they read very well indeed, beautifully; but you couldn't get anything out of those.

Mr. Willis: It is provided in section 90, of the Comings code, that solicitors are to be appointed by the mayor, and also, in section 91 of the Guerin code, that the head of the department of law shall be appointed by the mayor; what do you think about that—do you think it better to have him appointed, or elected?

Mr. Garfield: Oh, appointed, surely. I understand that is provided in both plans. I think by all means, the legal advisor of the mayor should be appointed by him; and also, it strikes me of very great importance that that officer should also be the prosecutor of the police court.

Mr. Price: Mr. Garfield, do you think it is constitutional for the legislature to create two legislative bodies in a municipality?

Mr. Garfield: I do not see why it would not be.

Mr. Price: An upper and a lower council?

Mr. Garfield: Yes.

Mr. Price: Is it constitutional to say that the upper council can pass an ordinance by itself which shall limit the action of the lower council, if that ordinance is not inconsistent with the law of the Constitution, first? Is it possible for the upper council, consistent with the powers granted, and with the Constitution, that they can confer power on the upper council to pass an ordinance that will compel the lower council as a result, to be controlled as to the power they may exercise?

Mr. Garfield: No, I don't think it would.

Mr. Price: I want to ask you to turn to the Governor's code, page 45, section 99.—"The board of public service may employ such superintendents, inspectors, engineers, physicians, district physicians, health and sanitary officers, etc.,—as may be necessary for the execution of its powers and duties, etc., as it may deem proper."—Taking what you indicated you believed the recent decision of the Supreme Court meant, would you think that was inhibited by the constitutional provision? Also, it says, "and may establish such departments for the administration of affairs under its supervision, as it may deem proper."

Mr. Garfield: It would not seem to me so; no. Perhaps, "Establish such departments," is using big words for a comparatively small matter. What I would take it to mean, is, that that is really only part of the administrative method of carrying out the affairs of that department, and it is not saying that they may take up certain things outside of the specific things laid down by this act—that would be one line of distinction, sir.

Mr. Price: What line of demarkation between officers, that you might say would be established under that, and employes?

Mr. Garfield: I doubt if there is any. As I say, I think the words are pretty big. This has occurred to me as being at any rate, part of the reasoning for the line of demarkation: The legislature shall say that a certain department shall exist, or a certain official appointed, and that that official shall have charge of the management of certain things; now, it manifestly is proper, it would seem to me, that the council may say—or even it might be for the director to say, whether he should have one or ten men to do that thing; and also, whether three men might be employed instead of one, as a kind of advisory board with him, provided they do not take on anything in the way of any other thing than that department was appointed to do, or was to be allowed to do.

Mr. Price: This bill is headed "Department of Public Safety," and "Department of Public Service?" You think, then, "department" as used here, is not used in the same sense?

Mr. Garfield: No; it does not seem to me so. To answer that a little more fully: It would not take any power away from the Board of Public Service, it would not be vesting a part of its power in that special department; that would be entirely under the control and authority of the upper power.

Mr. Stage: I have the same difficulty that others have had with this Board of Public Service establishing the department. Now, to drive that theory to the logical result, would you consider it constitutional, if the Legislature should provide, instead of the provision of the Governor's Code, under the head of "Executive," to say that the executive power and authority of cities shall be vested in a mayor and a Board of Public Administrators, and then add but few powers to the Board of Public Administrators beyond what are now given by the Governor's Code to the Board of Public Service—that they shall have the management of all the things now given, and in addition, the department of law, or administrator of law, and of accounts, and all the rest—and then to say that they shall have power to establish such other departments as they may deem fit in carrying out that administrative power?

Mr. Garfield: It would not seem to me to be constitutional to do that, Mr. Stage. I think a distinction can be made. In the first place, what is it that the constitution, under the interpretation of this decision, evidently meant? It evidently was intended that all of the cities of the state of Ohio should have the same form of government, so that we in Cleveland, going out to Columbus, or any other city, would have to study their form at all; we would know just exactly what each and all the departments were; we would know, if we wanted to ask any question, just where to go. Supposing we had a case involving the market house in the city of Columbus; we have to come down here and first find out where the market house is—whether it is under the direction of the Board of Public Service, or under any certain board, and we go to that board. Let me put it another way: It seems to me if we follow the code on the line you have indicated, that the result would be, that the full power and authority of action, with reference let us say, to the market house, would be conferred upon a certain board of men who

would have complete power to act as such board; whereas, in, let us say, the city of Columbus, if they had simply a Director of Public Affairs, he would have the complete power; he might appoint one of these special departments — I don't like the word — he might have a board of some kind under him; but that board would not have the power — they would have to refer everything back to him; they are merely his administrative agents, carrying out his views with reference to that market house; whereas, in the other case that you have supposed, we would find, we will say, when in Columbus, that the market house commissioner, or board, would not be the administrative agent carrying out somebody's views or ideas, but all the authority would be vested in that board. In other words, that would not be the same form of government, it would be different in Columbus and Cleveland.

Mr. Stage: Then, as I understand it, you mean that the constitution, in the organization clause, and in the clause providing that general laws shall have uniform operation, means that the form must be carried out, as well as the substance?

Mr. Garfield: The word "form" is not a safe one to use there; the substance, not the form.

Mr. Stage: Then so far as the interpretation of the word "organization" goes, it is a matter of opinion as to what extent organization is to be carried by the legislature; it is merely a matter of opinion to what extent organization must be carried? To illustrate: The legislature provides for a mayor and a city council; it provides that all municipalities alike shall have certain delegated powers; that an organization, consisting of a mayor and a city council is not enough of an organization to satisfy the requirements of the constitution, but the legislature must also say that the municipality must have a department of public works, a department of law, of accounts, of public safety; that would be enough of an organization to satisfy the requirements of the constitution, in your opinion?

Mr. Garfield: I would not put it that way; no. I should say that would be a distinction without a difference, to put it that way. I should say this: That to make it general in that character — and without meaning to be disrespectful — to make it so farcical — that there would be a mayor and a legislative body, that if all of those departments were, in substance and in reality, committees of council, and if they had to bring every municipal question back to council, or if there have been boards and other officials appointed by the mayor, to bring it back to

the mayor — then I don't believe it would be unconstitutional ; but I think it would be a great mistake. While it would preserve uniformity in substance, by bringing all the power back, either to the mayor or to council, it would make a confusion in our state, in the way the power, or the authority was carried out. We would know, if we went to Columbus, we must go to the mayor for everything administrative, and he would refer us to this, or that, or the other authority. But still, it would not be carrying out the idea in the same satisfactory way, to my view, that it would, if you provide for certain of the leading departments, the legislature conferring the power, as it would have the right to do. For instance, there is no manner of doubt, to my mind, that this legislature can provide for a Board of Public Works; they may make a hundred heads, or separate it up — all that is constitutional; but if the legislature simply says, there shall be an executive head, and then he may appoint, or the council may create, such departments as it, or he, sees fit to perform the work of that department — if, by that act, it is intended to confer upon different subdivisions, full power to act, without reference to council or mayor — then I say, it is not constitutional. In other words, this legislature, once for all, delegates the person or the board which shall exercise the authority, and that person or board, as we know in law generally, may do any administrative act by the hand of another; but I do not believe it would be constitutional to attempt to confer upon the council or the mayor, the power to create an office, and at the same time, delegate to that office more than an administrative act.

Mr. Stage: The difficulty we are struggling with, is to suit the needs of a community of 500, as well as a community of 400,000. I understand your pinion to be, that we must establish these departments, and that in the smaller cities they must fill those departments, and if a burden, and if they are not needed, that the council will not vote any salary to the head of the department?

Mr. Garfield: Well, yes. Personally, I can see really no burden on the small municipality to have these various officers.

Mr. Price: Suppose Teedon lays down in his work on Municipal Corporations, and also, Dillon says, that the power of the legislature of creating officers, can be delegated to the council of a municipality? Is there anything in our constitution against that,—if that proposition is laid down there as the law?

Mr. Garfield: I do not recall Teedom on that subject, but I think you will find the general proposition of Dillon is, that certain things may be delegated, but not legislative power; things that are delegated, are always administrative—I do not know the case.

Mr. Price: Is it not a fact you can delegate to municipal councils any legislative power that may be appropriate for carrying on the functions of government, both municipal and state?

Mr. Garfield: Yes; that only changes the question then, to say what is necessary, in appropriate power?

Let me answer that a little further. Recently, within the last two months or so, there has been a case decided in Massachusetts, a public franchise case; the theory differs somewhat, but I think the principle is the same: it has to do with this question of delegated power. I think it was the city of Worcester, undertook to enter into a contract for a "location" as they call it, instead of franchise, granted to a street railway company. Under the law of Massachusetts, it is necessary, when that grant is made, for the corporation to formally accept it by action of its board, in writing. That constitutes, not the contract, but it constitutes the "location" by the terms upon which it is granted. Now, the council of Worcester undertook to import into that grant certain provisions with reference, I think it was, to the paving of the "devil's strip," out of it, which the legislature has not said anything about. The case came on to be heard and has finally been decided, I think by the court of last resort. To introduce another fact,—the street railway accepted that grant in about these words: "That this railway company accepts this grant and all of the provisions thereof, insofar as the city of Worcester has the power to place those limitations upon the street railway." The city of Worcester maintained that it had a perfect right, because it was part of what was necessary to the city in carrying out the grant of the location, to include in it any of these things, and that therefore, this apparent exception, on the part of the railway company in accepting that grant, was not any good,—that it accepted all the conditions. The court said that the street railway accepted that contract and that it was quite right in making the exception, and that the city of Worcester had no power or authority, to include anything in that grant that the legislature had not expressly delegated to it to express in the grant.

Mr. Price: Let me ask another question: Suppose we pass a law saying that a municipality may organize its police force, either by having the marshal at the head, or a chief of police, or the board of public safety,

consisting of three members, and make that law applicable throughout the state; would that be a law of uniform operation, without any limitation on it?

Mr. Garfield: If the law provided precisely the same duties for each officer, I will say that it does not matter whether he is called the marshal or the chief of police, or whatever name you give; but it would seem to me it would not be uniform if you say that the municipality might have its police force power exercised by a director, or by a board,—I don't think that would be uniform.

Mr. Price: Let me ask you another question: Suppose we confer power on the municipality to build an elevated railroad, surface railroad or underground railroad: is that a uniform law?

Mr. Garfield: Yes.

Mr. Price: Of a general nature?

Mr. Garfield: Oh, yes.

Mr. Price: What is the difference between the two?

Mr. Garfield: The difference is, that the underground railroad and all of the others, have not to do with the granting of any power, and there is no authority exercised that is not precisely the same in every case. In the other case, it is a question of the grant of the delegation of a power, we have got to delegate it to the same man, that is, the same officer. I think you might call the officer by a different name in different places, the authority, in one place being possessed in a board, is exercised in a different way.

Mr. Price: Do you think that is a fair interpretation of the article of the constitution, saying all laws of a general nature shall have uniform application throughout the state?

Mr. Garfield: Yes.

Mr. Price: Now, as I understand Article 13, Section 6, says that the legislature shall provide by general laws for the organization of cities and villages; what would be the effect on that section, if "uniform" were in there,—to provide by general and uniform laws?

Mr. Garfield: The effect would be, there would be no distinction between cities and villages; "uniform" would destroy the distinction.

Mr. Price: Suppose we put two systems of law on the statute books to govern municipalities, and give the municipality the option as to which one it will incorporate under? Can you find any constitutional objection to it?

Mr. Garfield: Yes, I would; unless you state that villages may be incorporated, we will say, under the board plan, and the others under another plan. That might be done, I can see.

Mr. Price: We have two methods of incorporating villages and none in incorporating cities —

Mr. Garfield: That is, you mean through the trustees of the village or the county commissioners?

Mr. Price: Yes. Now, if a community incorporated under our general law, it is by their own consent, isn't that right?

Mr. Garfield: Yes.

Mr. Price: This legislature cannot incorporate any community by special act. Now, following either of those two methods, when the corporation is complete, the entity is born, and it is called a village, by our statute?

Mr. Garfield: Yes.

Mr. Price: Suppose we would put in a system incorporating cities, and say that, following a certain method, when the entity is born, it shall be a city; what would be the objection to it?

Mr. Garfield: There is no objection to that; it is constitutional.

Mr. Price: That is what I say. Then if we had a community here of 6,000, with 5,000 as the line of demarkation, there is no method by which to incorporate that into a city,— but suppose we did have a method. — Then here is another one of 250 population; there are two communities, and two methods, one to incorporate into city life, and one into village. Do you think either community could exercise its option as to which it would take, if there was no law against it?

Mr. Garfield: I think the question of numbers would determine, 5,000 being the limit for a city.

Mr. Price: Cutting out that reservation?

Mr. Garfield: Oh, I don't think then you would have provided—I don't think the legislature would have provided then for the organization of villages; we have got to make some line of demarkation.

Mr. Price: Suppose we would leave to the community the two methods of corporation, one leading to the city life, and the other to the village life,—can't you give those communities the option as to which method?

Mr. Garfield: That is to say, you mean that the 6,000 population, independent community, might incorporate as a village, and the 250 one, as a city?

Mr. Price: Yes.

Mr. Garfield: I think it would be necessary, in the first instance, for the legislature—under the Constitution—to provide which is a city and which is a village.

Mr. Price: Suppose the legislature would go ahead, and if we have the power to draw the line at 5,000, we would have the power to draw it at between two and three?

Mr. Garfield: Yes.

Mr. Price: Suppose we would not put anything in for villages?

Mr. Garfield: You wouldn't have provided what a village is.

Mr. Price: Well, that is true, but we still have the government all operating uniformly—everything would be a city?

Mr. Garfield: Well, I think the legislature would have avoided its duties; it would not have defined the difference between a village and a city; I don't think you can leave it open for any community to select.

Mr. Price: Suppose you have 6,000 people and 10,000 as the line; they are going to incorporate; now, how are they going to do it, except as a village?

Mr. Garfield: You are, of course, discussing right here the question of what we can do under a new provision, not what we can do to-day.

Mr. Price: But you would not say, because we didn't have any method of incorporation of cities on the statute book, that a community of 10,000, with the line of demarkation at 5,000—but that that community could still incorporate as a village, would you?

Mr. Garfield: Oh, if there were no line of demarkation, they would be under our law as they are at present, I suppose they could come in and incorporate.

Mr. Price: If there were no statutes for the incorporation of cities, and it was a community of 10,000, they have to incorporate as a village, do they not?

Mr. Garfield: Yes.

On motion, the Committee recessed to 2:00 P. M., of the same day.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

TUESDAY, SEPTEMBER 9, 1902.

2:00 P. M.

The Committee met pursuant to adjournment, all members being present except Messrs. Allen and Gear.

The Chairman: We have with us this afternoon a delegation of gentlemen from the Cleveland Chamber of Commerce who wish to present their views to the committee. We will first hear from Mr. Holden.

Mr. L. E. Holden: Mr. Chairman and Gentlemen of the Committee: The Chamber of Commerce of Cleveland, a body of fifteen hundred gentlemen representing the business interests of the city, by its board of directors yesterday sent a few of us down here to talk to you and to confer with you in regard to this code bill. Of course, we are deeply interested in it. We know also how much you have to hear and how patiently up to this time you have heard and will continue undoubtedly as long as the time permitted for a discussion of the question. At the same time it is our desire not to burden you and so far as my own remarks are concerned they will be brief and cover only the general opinions of the subject which we wish to present.

Last year you had before you a code bill and we had a committee appointed to consider it carefully, and the action of the Chamber of Commerce of Cleveland was embodied in a report of the committee of which Mr. Garfield who is present here was the chairman. We have had no meeting of the Chamber of Commerce except by its directors up to this time, but as that is the consensus of opinion of the Chamber of Commerce delivered while you were in session last March, it is my pleasure to state to you first what was the opinion of the Chamber of Commerce after careful deliberation and discussion for a long time and then to give such opinions as I think are pertinent after I give you the consensus of their opinion.

First, it is said:

"We have examined the code, considering the special effect it would have, if adopted, upon the municipal government of Cleveland as well as the changes which it would cause in the general municipal laws of the state. We unanimously endorse the following main features of the code:

"First, The single division of municipal government into cities and villages."

What was pertinent to that bill is pertinent to the present codes that are under discussion and as we understand it there can be no question that that division must take place and that it will take place. And then, second:

"The principle of absolute uniformity of all municipal laws."

Of course, we understand now after the decision of the Supreme Court that that must prevail. There can be no more special legislation, and hence this committee's session now and this session of the legislature. We all know it is what ought to have been done long ago under our constitution. Every business man, every lawyer, every person who has carefully considered the question knows that we have been doing business under false colors, that we have been enacting laws and special legislation which under our constitution we have no right to do, and for one I am thankful that the question has come up and been decided as it has because I have all confidence that this legislature will pass a code that will be in accordance with the constitution.

"Third, The federal plan of government."

That federal plan of government I know you are all familiar with. We have tried it in the city of Cleveland for about ten years and we know full well how it works. We know some of its disadvantages and we know all of its advantages. You understand, as I do, that the central thought in the federal plan is personal responsibility, that is, we elect the mayor by the people. He is the representative elected of the people. He should at least embody the opinions of the majority of the people in the city. At any rate under the federal plan he is held responsible for his administration and for the administration of government. I think personally, and it is the opinion of our Chamber of Commerce, as I believe it is of a very large majority of our people in the city of Cleveland, that the federal plan is in essence the plan that we ought to adopt. It could not be adopted for anything but all villages and all cities, but if adopted it embodies the idea of responsibility, of fixed responsibility for the government somewhere, and I know no better place to fix it than on the man whom the majority of the people of the city have elected.

So that keeping that as the central thought, I am expressing not only my individual opinion, for it so happens that in our city we had had the board plan for many years. We kept increasing our boards until there was no responsibility seemingly. It was board upon board until I think

we had something like twenty-three boards in the city which constituted its government; and our citizens came together and selected a committee of one hundred for the purpose of devising a better government for the city of Cleveland. After considering it carefully by committee and then as a committee of the whole we came down with a federal plan here to the legislature and the plan we suggested was substantially the plan that was adopted.

The fourth suggestion or opinion was this:

"General provisions for the administration of the various branches of the municipal government."

I need not go into the details of that. It is a natural outgrowth of the federal plan.

"Fifth. The principle of the merit system for the selection of non-elective officials and employees."

Now, in regard to that system I am like many of you. I was trained to believe that all government in the United States should be a government by parties. I was born in New England and trained to that idea. My forty years of life in Ohio for the first part of it was under that idea, but as I commenced studying more fully, more carefully, I came to the conclusion that that idea for the government of municipalities is all wrong. The corporation is a corporation whether it be the municipal government or it be a railroad, a manufacturing industry or what not. It is an institution that should be at least carried on on business principles. Now, if it is to be carried on on business principles—and you know and I know that that is the only thing that ever ought to enter into the administration of the government of a city—now when we came back into our better thought, into our better judgment that is the conclusion which every good citizen in my judgment will come to.

Let us apply it just for a single instance. Suppose you are governing a great railroad like the New York Central. Do you think that those men would select a man because he is a Democrat or a Republican, an Episcopalian or a Methodist, a Catholic or Congregationalist? No, not by any means. He is selected because of his fitness to do that business. Hence the government of all great corporations to-day, as the government of all great business enterprises whether by an individual or by an association of individuals, is maintained on the merit system. Now take a single instance. What connection can there possibly be between a high or a low tariff and the building of a street or an aqueduct in the city of Cleveland? Not any in the least. What can be the connection between

the buying of a pumping engine or of taking care of a pest house or any of the other departments of the city and bi-metalism or mono-metalism? When you stop and think it over it is absolutely absurd to connect the two things together. There is no logical connection, there is no kindred relation. Then why not have a divorce, divorce national politics from the government of cities, and the way to divorce it is simply to put the government of the city on the merit system. Let your men be trained men. let them be educated men, let them be men fitted to do the work which you want them to do. Then you select from that body which has been selected, men that are fitted for the positions to be filled. That is the reason why in my own study, in my own observation, in my travels over the world and the country I came to the conclusion that there is but one just and logical conclusion to come to in the government of cities and that is to base it on the merit system. I mean just what this states: "The principle of the merit system for the selection of all non-elective officials and employees."

It would be a wise thing if we would carry it still further and we can and we shall in the coming time. We shall nominate for these elective offices men who have been true and tried in public service for the great places because of their fitness for those positions and not because simply that they are available men to be elected.

Yesterday we held a meeting of the board of directors of the Chamber of Commerce in the city and we talked these questions over carefully and we concluded, at least the board concluded, it was a wise policy to endorse what we find in the several bills in regard to the separation and absolute separation of the legislative, the executive and the judicial departments of the government. We say as your bills will say and as any one studying the question will say, that if we are to have the federal plan or any other plan that the policy and the principles that we embody in our own national government are wise in this respect. You who are students of the early times know full well how carefully Judge Marshall and all the students and writers in those days clung to that idea of separating at all times and making independent the three great departments of government. It is just as good for a city or a village as it is for the general government.

Then there is another point on which we passed a resolution and which we thoroughly endorse as a modification of our present law and that is this: There was a time, and it has been a practice through different party administrations in Cleveland, when the mayor could go before the

council and did go before the council and was pretty near the whole thing in legislation. Now, we believe it is a wise policy for the state to so separate these different departments that whatever communications are to be sent from the mayor, that is, the executive department, to the legislative department shall be sent in writing that there may be a fair deliberation, that you may know exactly what his requests are. If this policy is wise for the President of the United States it is certainly wise in the administration of government in our cities. Do you find the President of the United States going into the Senate or the House and speaking upon topics upon which he wishes to have legislation? Not by any means. Therefore whatever may be the form of government that you may give to the cities and villages of the state of Ohio, I sincerely hope, and I express the wish of the Chamber of Commerce of the City of Cleveland, that you embody those three things strongly and well.

In looking over these bills there are two or three other things that I most thoroughly endorse as an individual which have not been acted upon by our Chamber, but commend themselves most thoroughly to all thinking men I believe. Now, take for instance the idea that is presented for the legislative department of the city in these codes. The foundation of everything in our country is the right of representation, the right of representation of locality, the right of representation of all the people. I see in this Nash bill and others that that idea is emphasized. It ought to be emphasized, it ought to be carefully preserved and it will be undoubtedly before it leaves your hands.

That principle which is embodied there of having the wards represented, having the villages divided into wards and the wards represented is right. It is not partisan, it is American. It has grown out beyond the question of partisanship. It is American. We have it in our state, we have our congressional districts, we have our representative districts here at home in the state and our Senatorial districts. Therefore that runs throughout all the states and it is, as I say, an American doctrine. We want to hold fast to that. And then this other elastic system which is the most philosophical of all; that is, you have a portion of these men elected at large. That is all right. You embody the same principles that we do in the United States Senate in that thought. I like it.

And another thought you have got in this bill is that it is so arranged that you can increase the representation as the population grows. Now what more can we ask for? That is the foundation for everything, it seems to me, and I like it, and I believe the people of this state and not

only the people of this state, but the people all over the country by and by will in their re-organization, if you adopt the federal plan, copy this and it will become general throughout the United States.

Now, Mr. Chairman I did not intend to talk long. I wish to express in behalf of the Chamber of Commerce their appreciation of the work which you are trying to do, and, as we all believe, the conscientious manner in which you are studying these questions. We sincerely hope that the opinions which we have expressed as a Chamber may meet with your approval and we will be only too glad to endorse and help forward whatever you may do for the good will and for the good government of the cities and villages of the state of Ohio.

Mr. Worthington: Both in the so-called Nash code and in the Guerin code it is provided that the mayor in villages in case of a tie shall have the right to vote, whether the ordinance carries with it an expenditure of money or not. Do you think that that power should be given to the mayor?

Mr. Holden: It is my thorough conviction that in the expenditure of money on all questions where money is to be expended, only those should have final voice in it who have been elected by the people. Now, as the mayor is as much the representative of the people as the council is, when it comes to a tie vote and it must be decided some way, I see no reason why the mayor should not have that voice.

Mr. Metzger: The Nash bill puts only the members of the police and fire departments under civil service. I understood you to say that all of the administrative officials of the city that are non-elective ought to be under civil service?

Mr. Holden: I said that as being the opinion of the Chamber of Commerce and my most earnest conviction.

Mr. Metzger: Another question in connection with that. Where should the authority for the creation of this civil service board or commission lodge. Should the appointment of that board rest with the mayor or should a state board be provided, with a uniform system of civil service examination throughout the state? In other words, should there be a separation of the civil service board and the appointing power?

Mr. Holden: In all human probability a mayor would be influenced to a certain extent, but when the council has the right of confirming, it seems to me as though, if we stand upon the rule of local self-government, that it is wiser and better to leave that in the hands of the mayor,

subject to the approval of council, than it is to go to the central power of the state.

Mr. Guerin: Mr. Holden, I have introduced a bill here in which I have placed the police, fire and health departments under the merit system, and in connection with that and in order to obtain what I think is proper civil service, I have provided that the governor of the state shall appoint a bi-partisan board of civil service commissioners, four in number, serving with compensation, their entire time to be devoted to the duties of their offices as members of this commission; that the director, instead of the board of the department of public safety shall classify the list of employes in the fire and police departments which are under his supervision and send in such information as he thinks is necessary for the state board to inform them as to the character of the examinations relating to his city. I have made provision that this state board shall organize and conduct their examinations in like manner as the examinations in the post office department are conducted by the civil service commissioners of the National government, leaving the appointive power in the head or director of that department. The names of the three standing highest in in the examination are to be certified to the director of each class. The director makes the appointments instead of the mayor. He is responsible for that department. I provide that the chiefs of the police and fire departments shall have the sole right to suspend the employes under them and have entire charge and control of the men who are subordinate to them in that department, subject to such rules as the director of that department may prescribe. The mayor is the chief conservator of the peace. Except that he has the right to remove the director for cause, he has no control over that department, but it is his duty to see that the department is properly conducted, the idea being to separate entirely the executive from the administrative departments of the city. Now, I want to ask you from your observation and experience and your study of this matter if you don't believe that under a state board, free from any political prejudice that may exist at home, we would obtain better service in these departments than if such examinations were conducted under a board such as is provided in the governor's bill which is left free to make such rules and regulations and prescribe such examinations as it deems fit and proper?

Mr. Holden: I believe that state uniformity for examination of applicants for civil positions to be filled by appointment in villages and cities is desirable, and to that end I approve the appointment of a state

board by the governor whose duties shall be to devise a system of examinations for civil service in all villages and cities in this state, and that all appointments shall be made in municipalities from persons who qualify under such system, and that all appointments shall be made by local authorities.

Mr. Wilson M. Day: Mr. Chairman and Gentlemen of the Committee: In the candid judgment of the Cleveland Chamber of Commerce and myself, the further away you get from the federal plan and the more you get toward the board plan, the greater mistake this legislature will make. We have had some experience with the board plan in Cleveland. Fifteen years ago we discovered that we were not properly governed in Cleveland and about one hundred business men met together to consider the situation. We found that we had some 23 different and distinct boards, large and small, influential and otherwise. There was no harmony of action in our city government, but, on the contrary, there was very widespread complaint of the lack of business methods in the conduct of public affairs. Out of all that came the federal plan, so-called. If I were to re-name it, I would call it the business method of conducting city affairs. The sentiment of the Cleveland Chamber of Commerce is almost a unit in support of the federal plan. It has not been without its disappointments, it has not been without its difficulties. Some of these difficulties crept in at the very start. We made a very great mistake in compromising on this question when we conferred upon the board of control some legislative functions, and we appeal to you to-day that there should be an absolute division of the administrative and the legislative branches of the government.

In the second place we failed to couple with the federal plan the merit system. The result has been that there has been a disregard on some occasions of the spirit of the federal plan and the mayor has passed over the heads of departments and made appointments or insisted on appointments in violation of the true spirit of the federal plan. That ought to be cured, it can be cured, and I judge from what I hear to-day that some feature of your proposed code will cover this very essential feature.

Mr. Guerin: I would like to ask the speaker, if he cares to answer, to which political party he belongs?

Mr. Day: Do you mean locally or nationally?

Mr. Guerin: Any way you want to put it.

Mr. Day: I am a Republican, and I have voted for Democrats for local offices frequently.

Mr. Guerin: You may state, so that we can get it into the record, what party has been in control in Cleveland for some time?

Mr. Day: I presume the Democrats have been mostly in control, but we are not kicking on that. Mr. Holden corrects me. We are not accustomed to watching those things in Cleveland. We are trying to get the best men, but Mr. Holden says the Republicans have been more in control under the federal plan than the Democrats.

Mr. Fred. B. Thomas: The Chamber of Commerce is a power in the civic affairs of our city and when the chamber speaks it is always found to be on the right side of every public question. We believe that the merit system can be followed the same way in the government of our cities and villages as it is by business men in the conduct of their own business. I sincerely hope whatever code bill you adopt you will have the merit system of civil service for all employes of our city government as one of the features of that bill.

Mr. Guerin: About how many active members have you in the Cleveland Chamber of Commerce?

Mr. Thomas: Fifteen hundred.

Mr. Guerin: Do you know how that compares with the board of trade or chamber of commerce in New York City?

Mr. Thomas: I believe that the Cleveland Chamber of Commerce stands without an exception as the leading chamber of commerce of the United States. It is composed of representative citizens, irrespective of any political party.

Mr. Samuel Scovill, Chairman of the Committee on Legislation of the Cleveland Chamber of Commerce: Mr. Chairman and Gentlemen of the Committee: I think it is most important that the executive parts of the government should be kept to their own line of duties which is, in carrying out the line of policy instituted by the legislative department. I would like also to emphasize the fact that in adopting a merit system you want to adopt a merit system, and personally I would say emphatically that the board of examiners should be appointed by the state authorities.

In the code Mr. Comings introduced last year there were some very elaborate specifications and details for such a board, and I should think that those measures might be studied with a great deal of minuteness by the people who are interested in forming this code who should see that they absolutely lay out a merit system.

If in your wisdom you see fit to adopt the board plan, I think the board of public service as constituted in the governor's plan is given

altogether too much power. As Mr. Holden said, all expenditures of money should be authorized by the council and there should be no way in which any board should have the opportunity of putting expense upon the city without it is first authorized by the legislative body.

In regard to franchises, the committee of the chamber on which I served last year said in its resolution:

"That the provisions in said bill relating to the method of granting public franchises or renewals thereof be eliminated, such changes, if any, being more properly subjects for legislative consideration apart from the municipal code."

I don't think you can make any mistake in following that suggestion. The granting of franchises in my judgment is something on which the State ought to have a policy. It ought to have a clear policy for the reason that in addition to the municipal franchises that are granted, county commissioners are now granting franchises to run over the public roads in one way and another; and in addition you have also the fact that these public franchise companies are turning in every year a very large percentage of the revenue of the state, and the state necessarily is interested in the corporations which are turning over to it revenue. As an individual and not as a chamber of commerce I do say the franchise companies ought to be given in some way security of tenure. It would create an almost unheard of condition to suppose that some of these large corporations would be compelled to go out of business at the end of their term of years. If that sort of thing once got into the minds of the people who now own the securities of these corporations, the service which the people would be getting from now on until the end of the franchises would be very miserable. There would be a tremendous outcry and it would entail a very considerable damage upon the cities.

Mr. E. H. Hopkins: Mr. Chairman and Gentlemen of the Committee: It occurs to me there is nothing more to be added to what has already been said, except, perhaps, to emphasize even once more the importance of the merit system. As to the federal plan of government, I simply wish to add my testimony to this fact: That the people of Cleveland were probably the worst board-ridden people in the state of Ohio prior to the adoption of the so-called federal plan of government, and that after a trial of some ten years or so I have heard almost no one speak against the federal plan of government as we have it there. There are some important respects in which it may be improv'd. The entire separation of the administrative from the legislative functions it seems to us

should be enforced. Aside from a few changes of that kind, it is my judgment that the people of Cleveland are very generally very much in favor of the so-called federal plan.

Mr. T. H. Hogsett: Mr. President and Gentlemen of the Committee: On this occasion I come here as a member of the committee from the Chamber of Commerce and also as a member of the committee appointed by the municipal associations of the city of Cleveland. You have heard from the gentlemen who have preceded me what the sentiment of Cleveland is on this subject. I have gone over with some care both the Nash code, so-called, and the Guerin code. There are many features of the Governor's code which I believe to be good features. There are some features of it that I do not believe are as good as some others. I refer chiefly to the provisions as to the plan of government and it ought to be a sufficient inducement so far as you are concerned when you hear the testimony from such organizations as the Chamber of Commerce and the municipal association of that city. It is the universal sentiment of the city of Cleveland that the federal plan ought to be adopted or provided for by the municipal code.

When I was here a week or ten days ago I called attention to section 134 of the Nash code. I may not have gone into the matter sufficiently to have you understand just what interest the city of Cleveland has in that particular provision. There has been considerable agitation for a number of years of a plan for the grouping of the public buildings in the city down towards the lake shore. They have in process of construction there now a federal building on the public square and the plan which has been adopted for the grouping of the municipal buildings extends down to the lake shore with parks in such manner as will make them not only convenient but beautiful. In 1898 there was an act passed providing for a city hall commission in the city of Cleveland, which act was applicable to cities of the second grade to the first class, providing for the appointment of a commission of three and defining their powers to acquire land and to superintend the construction and furnishing of a new city hall for the city of Cleveland. It was thought after they had adopted their group plan in order to provide the best method or means of procuring the best result; that there should be a commission of architects or experts whose duty it should be to supervise the construction of these various buildings, their location, plans, etc., and an act was passed applying to cities of the second grade of the first class providing for the appointment of a commission consisting of three persons, two of whom should be architects.

The appointment of the members of that commission was made by the Governor under the provisions of this act on the request of the city council. Then another act was passed providing a market house commission and defining the powers of that commission. Now it is the desire of the people of the city of Cleveland that they have this kind of supervision over the construction of these buildings.

There was a clause as you will notice, section 134, incorporated into that code. I simply call attention to the fact that in my judgment that clause would not meet the case for the reason that, as I construe it, that simply amounts to a legislative declaration that an unconstitutional act shall be constitutional. I confess that the preparation of a clause that will meet the necessities of these particular cases is not an easy task. I have given the matter some consideration and I believe that there should be a clause extending the authority to the city council or to the municipality to employ, as employes of the city, persons not to exceed three for instance, whose duties may be as those that are provided for in this special act, giving to any city the power to employ such persons to act in that capacity if they choose to do so; just the same with each of the other commissioners, conferring the authority, and when that authority is exercised it shall be exercised within the limits prescribed by the act which shall set forth the authority of the commission in a particular case.

I have not yet prepared in whole a clause which I think will cover that provision. We are very anxious as far as the city of Cleveland is concerned that we make provision so that we may have the benefit of the experience and knowledge of persons of that kind in the construction of our public buildings. It is not, of course, incumbent upon any municipality to employ such persons unless the necessity arises. I hope if you can make a valid law authorizing such a thing that you will incorporate it into any code which you may enact.

I have looked over the provisions of the Guerin code which incorporates very largely the provisions of the Nash code until it comes to that part providing the plan of government and the merit system. The Nash code provides that the police and fire departments shall be under a merit system. That is all it says. I believe that if we are going to have a merit system, you should define specifically what you mean by a merit system. I believe that the merit system should be applicable to all departments of the municipality except the heads of departments and their confidential clerks or secretaries. I believe that the Guerin code falls short of that in this, and it does not extend it except to the police and fire departments

and the health departments, but next to extending it to all departments, I believe it provides the next best thing. It gives the municipality authority to extend it to other departments if it chooses to do so. I can see no reason why if the merit system is a good thing in the fire department and the police department and the health department it is a good thing in all departments. Wherein is the distinction? And that it is a good thing in any department has been sufficiently demonstrated by its operation under the federal government.

With regard to the examinations, if I may do so I would suggest that there should be a state commission. Remove that matter as far as possible from local influences when you come to the question of ascertaining the qualifications of the person who is an applicant for an office or position in a municipality.

Another feature of the Guerin code is the fact that the municipal machinery provided can be made operative in the smallest city in the state of Ohio if you make the line of demarkation at five thousand. Is there any plan that has been suggested that is simpler, that is less cumbersome, that would be more easily operated under, that would be less expensive, because you have the expenditures all within your own hands at home and you don't have an army of officers. That same machine is large enough for the operation of the largest city in this state or the largest city that we will have in this state for twenty-five or fifty years, I do not care how large they get. Then you have a system of uniform operation throughout the state and you do not have it any too large for the small cities and you have underlying your structure an efficient merit system and you have got business in the administration of your public affairs.

Mr. Stage: I would like to ask Mr. Hogsett if he thinks that a law providing for the merit system is a law of a general nature?

Mr. Hogsett: It depends on what the law is. You can make it of a general nature.

Mr. Stage: Is the subject matter of the merit system a matter of a general nature?

Mr. Hogsett: It need not necessarily be so.

Mr. Stage: What I want to get at is whether if it is a matter of a general nature the provision in the Guerin code leaving it optional to put it in operation would infringe upon the constitutional provision that all laws of a general nature shall have uniform operation throughout the state?

Mr. Hogsett: I don't think that it is a matter of a general nature within the contemplation of that constitutional provision, and I think if you can have it extended to every part of the government, then you ought to have the next best thing and give the municipality the right to have it.

Mr. Stage: Do you think there is any reason why it can not be extended?

Mr. Hogsett: I don't know of any reason, no.

Mr. Stage: With reference to section 134, would it not be as simple as any other method and as feasible to re-draft the acts in question, making them general and embody them in such code as we adopt in toto?

Mr. Hogsett: There are some features of those acts which are essentially local and you must eliminate those features, re-draft them; and I believe that there ought to be a separate section for each instead of having them all or attempting to get them all in one, because the powers of the different commissioners are different as designated in this act. There are some of the powers prescribed in some of these acts that can not probably be included in a general act, but the elimination of those will not necessarily destroy the efficiency of such a commission.

Mr. Worthington: As I understood the gentleman, there was a great deal in the Nash code that was good?

Mr. Hogsett: I think so.

Mr. Worthington: I would like to have your committee not only point out the objectionable features in the Nash code, but suggest the remedy and submit it to the members of the Committee. Would you be willing to do that?

Mr. Hogsett: Yes, I can do that in a few words, I think.

Mr. Worthington: I mean, submit it in the form of a recommendation.

Mr. Hogsett: I would be very glad to do. It is simply the incorporation of those features of the federal plan, so-called, and the merit system. Those are the chief features. There are one or two suggestions of minor importance. For instance, in the conferring of power our committee of the Bar association went over that hurriedly. Our chief object was to get a plan which we thought would conform to the requirements of the Constitution, or, in other words, to satisfy ourselves as to the constitutional requirements in providing for the organization of cities and villages. For instance, take in the enumeration of powers. It says they shall have power to determine what shall be a nuisance and provide for

the abatement of the same. Now, I don't believe it is within the power of the council to determine what shall be a nuisance. I think that is a matter for judicial determination.

Mr. Worthington: If you get these suggestions up and submit them to the committee, that would help us in amending the Nash code, if we take that as a basis.

Mr. Hogsett: I would be glad to make those suggestions in a letter to the committee.

Mr. Silberberg: In your former address, representing the State Bar Association, you recommended four heads of departments. Did that include the mayor and treasurer?

Mr. Hogsett: No, excluding those.

Mr. Silberberg: In the smaller municipalities could it be that one head could take care of the departments of public service and public safety?

Mr. Hogsett: It could be if that were made of uniform operation in all the cities, but I don't you could have that in one city and not have it another.

Mr. Guerin: Is there any constitutional provision prohibiting the enactment of a code which shall provide in substance that in the absence of a police judge or his failure to act the mayor of the municipality may act as police judge; or that the person who is elected as director of accounts can also act as clerk of the city council, combining those two offices at the option of the council?

Mr. Hogsett: I see no trouble so far as the latter is concerned, because the clerk of the council is simply an employe of the council, in other words, is not an officer within the meaning of that term as we use it in the organization of cities. It is not an agency, but it is one of the means by which the agency performs its functions.

Mr. Guerin: Could any provision be made in the code making it optional with the council to establish separate departments of public safety and public service or to combine the two?

Mr. Hogsett: I don't think so, if the heads of these departments are to have authority independent of the city council. If the council is made the legislative and administrative body, in other words, if legislative and administrative powers are vested in the council, then council may go and employ whatever means is necessary to carry on the business of the corporation, but at all times those persons employed in the carrying on of that work would be responsible to the head of the whole institution,

which would be the city council, and the council would not be legislative body simply but would be a body with both legislative and administrative powers.

Mr. Guerin: I would like to ask you whether in your opinion it would be practicable to provide for the election of officers with power of removal of those elective officers placed in the mayor?

Mr. Hogsett: From my experience in the matter of municipal work I am certainly clearly satisfied that the better service will be had if the heads of departments are appointed by the mayor. I don't believe, in other words, in the division of the executive or administrative authority, or power, or responsibility. I don't believe in the division of responsibility. Centralize your responsibility and I believe the result will be for the interests of the municipality itself.

Mr. Denman: What is your opinion of the constitutionality of the plan to confer judicial power for police court purposes upon every mayor in a city; then provide further that when council shall by resolution declare it necessary, the mayor at the next municipal election shall provide in his proclamation for the election of a judge, and then go on and let the statute provide for the full machinery of the police court, leaving only one thing to the council, and that to declare by resolution that it is necessary for the city to have a police court.

Mr. Hogsett: I think that would have the same question then that is now pending in the courts. You are providing a municipal agency here which depends upon some action of the council before the agency is made complete. I believe the constitution requires that that agency shall be provided by the act of the General Assembly and that that shall be made complete. That is what is meant, as I understand it, by the organization of the municipality. As to the exact language of a provision covering that I would want to go over it pretty thoroughly together with a review of the authorities on the subject.

Mr. Denman: What leads me to ask the question is the case of *Gordon vs. State*, in 46 Ohio State. It involved the law providing for township local option, which provided that there should be one thing left to a vote of the people, namely, whether or not they would have saloons. The question raised in that case was whether or not that delegated legislative power, and also that it was not a law of uniform operation. Both questions were considered fully and the court said it was a law the taking effect of which depended simply upon a contingency, and that might happen in any case; that the only thing left to the people was to say whether

or not they wanted it. If they said no, then the law did not go into effect. If they said yes, then the whole machinery was prescribed and it went into effect.

Mr. Hogsett: There seems to be a line of authorities in support of that proposition, that a law should take effect, like a city ordinance, when it is ratified by a vote of the people; but the question is a little different, as I take it, in this: That the legislature enacts a law and says that that law shall take effect from and after its passage, and in it provides that it shall not take effect until some man says it shall.

Mr. Denman: That was the Gordon case exactly, and they sustained it.

Mr. Hogsett: That was submitting it to a vote of the people.

Mr. Denman: Suppose we would submit this to a vote of the people whether they would have a proclamation issued at the next election for the election of a police judge?

Mr. Hogsett: The court did not hold in the Gordon case that it was a subject matter of a general nature, did it?

Mr. Denman: Yes, sir.

Mr. Hogsett: I don't remember that particular case now, but the question that I suggest is the question that is now pending in the board of review case.

Mr. Denman: That has been sustained by the Circuit Court of Cuyahoga county, has it not?

Mr. Hogsett: Whether it has passed through the Circuit Court or not I don't know.

Mr. Guerin: The distinction you make between the police court and the extension of the civil service is that in the matter of the establishment of a police court and the electing of a judge you are establishing an office and placing power, and in the matter of civil service you are simply extending to the cities the means for carrying out the power?

Mr. Hogsett: Yes. One is an agency and the other is a means for the carrying out, the performing of the duties.

Mr. Stage: The Guerin bill provides, I believe, or will provide a so-called curative clause, which is, in substance, that the grantees of franchises from municipalities shall remain in the undisturbed enjoyment of those franchises for the length of the original term where the law granting those franchises has been declared unconstitutional. I would like to ask your opinion as to the constitutionality of that provision.

Mr. Hogsett: I would like to see the provision exactly and know to what it is to apply.

Mr. Guerin: The provision is in substance this: That where any municipality in the state of Ohio at any time has granted a franchise or right to a street railway to occupy the public highways, etc., under a law that existed at that time duly passed by the legislature of the state of Ohio and where that franchise has been accepted by the corporation, a contract entered into and money expended in good faith in carrying out that contract, whether that law has since been declared unconstitutional or not, the corporation shall have the right to occupy the rights granted it until the expiration of the time for which the original grant was made. Some years ago under a special act of the legislature certain bonds were issued by Athens county and the commissioners attempted to levy a tax for the payment of those bonds. The courts of Ohio held that the municipality need not pay the bonds, that they were issued under an unconstitutional act. Suit was brought in the United States court and that court held that under the provisions of the constitution not alone of the United States but also of the State of Ohio, a contract having been made between the municipality and the holders of those bonds in good faith and money expended, that municipality must pay those bonds, and they enjoined upon the commissioners of that county the duty of levying a tax and collecting it and paying off the bonds, and that was done. I say that the same principle applies where any contract under a law in force at the time it is made is made in good faith and money expended, that that contract shall stand unabrogated until the contract is performed, unless the contract happens to be one against public policy.

Mr. Hogsett: That is a question I have not examined at all and I don't want to assume to express any opinion here on any legal proposition unless I have examined it. It is not fair to you, it is not fair to me. This feature has never been presented to me, nor have I considered it. I know there is a line of authorities sustaining bond issues in certain cases, but when you come to examine the authorities and differentiate and apply them to a particular case, you must certainly have the facts of the particular case at hand and then examine with some care the authorities bearing upon that subject.

Mr. Denman: I want to ask Mr. Guerin if a contract between the city and the company is good, what is the need of a curative provision?

Mr. Guerin: The purpose is simply this: The act applied more especially to Cincinnati and Dayton than to any other two cities of the

state, and in both of those cities franchises were granted under special acts. In Cincinnati the policy of the company was to secure the goodwill of the employes and better service by getting them interested as stockholders of the concern, which they did. They got their money and put it into the road, the same as the money got from anyone else. They sold them the stock. The Superior Court of Cincinnati has held that the franchise was invalid. The Chamber of Commerce of Cincinnati, composed of persons of all political parties, the city officials of Cincinnati and everyone there, demand that the legislature shall at this juncture impose a safeguard against any such calamity as pointed out by the Superior Court. Personally I don't believe it will do any more than the bill which was introduced by Speaker McKinnon last winter to legalize the issue of bonds by municipalities to restore confidence. The people demanded it, it was a wise measure and it answered its purpose, and no one was dissatisfied. The legislature of Ohio is asked to do the same thing with relation to the street railway franchises for that very purpose, and that is all.

Mr. Chapman: Didn't the McKinnon bill revise the franchise also?

Mr. Guerin: No, sir; it did not.

Mr. Stage: I will ask you whether there is a distinction between the case pointed out by Mr. Guerin where, as in the Cleveland armory case, the commissioners issued bonds, the armory was built and the property bought and the county itself had the benefit for which the bonds were issued, and the Cincinnati case, which is only cutting off to some extent the franchise under which the company operated, but is not taking away the benefit of the return of the capital invested?

Mr. Hogsett: There may be a distinction there. It is certainly a question that would suggest itself to a lawyer to investigate before he offered an opinion on the subject. I don't know anything about that situation. It may be just, it may be right, and it may be wrong. As to the legal power and authority I don't assume now to give any opinion, because, as I say, it would not be fair to you nor fair to me. I have not examined it, and I will not give any more off-hand opinions than I can help in a matter of this kind.

Mr. Denman: I would like to have Mr. Hogsett just look at this question a little bit. I think from what I see among the members of the committee and the members of the legislature generally they agree on a mayor, a clerk or auditor, a treasurer and a solicitor, and, of course there

must be a department of public safety and a department of public works. What bothers many of the communities, however, is whether they shall have one, or three, or more. Some want one and some want five. What I would like to have you look at is whether or not we might not provide all these departments just exactly as they are in the Guerin bill, if you please, or in the old Pugh-Kibler bill, which is the same thing, or in the Comings bill of last spring, which is the same thing, and say that these departments shall be presided over by a director or directors in such numbers as the council may determine necessary. I believe it could be done, but I would like to have you investigate it.

Mr. Hogsett: I have to some extent investigated that subject, and I thought I had investigated it pretty thoroughly, and I came to the conclusion that the safe course would be to provide what your agencies shall be.

The Chairman: The next subject on the programme is Builders' Associations. Mr. E. O. Schoedinger will have charge of the speakers for the Ohio State Association of Builders' Exchanges.

Mr. Schoedinger: Mr. Chairman and Gentlemen of the Committee: At our annual meeting held at Put-in-Bay last July, we adopted the following resolutions:

"Whereas, The laws of this state in relation to the government of cities are about to be codified by the legislature, a special session of which has been called for that purpose by the governor, and

"Whereas, Any action taken by the legislature in this direction may both directly and indirectly affect the interests of builders in the large cities throughout the commonwealth, therefore, be it

Resolved; That the particular attention of the executive board of our organization be called to this matter, and that they be given full authority to appropriate necessary funds and at once to appoint a special committee from among their number to see that the local exchanges and prominent builders in cities where there are no exchanges be urged to co-operate with them in securing such just, reasonable and equitable laws that the best interests of the building trades will be subserved. Be it further

Resolved; That it is the sense of this meeting that laws allowing the greatest latitude and home rule in the governing of the building departments as well as in the general government of cities be most acceptable to our body."

In conformity with these resolutions the executive committee of this association has met and passed the following resolutions:

"Resolved by the Executive Committee of the Ohio State Association of Builders' Exchanges that this committee heartily indorses section 13

of the so-called Nash municipal code bill, with suggested amendments as shown on copy hereto attached, and recommends to the legislature that the general powers therein defined be given to municipalities. Be it further

"Resolved; That we recommend that provision be made in the code for attaching the division of building in each city to the department of public safety, to which department the superintendent or inspector of buildings shall be responsible for the proper conduct of said division.

"Suggested amendment: That sub-section 13 of section 7 be amended to read as follows :

"13. To regulate the erection of buildings, fences, billboards, signs, and other structures within the corporate limits; to require and regulate the numbering and renumbering of buildings by owners and occupants thereof; to regulate the repair of, alteration in and addition to buildings; to provide for the construction, erection and placing of elevators, stairways and fire-escapes in and upon buildings; to provide for the removal and repair of insecure buildings, bill-boards, signs and other structures, and to provide for the inspection of all buildings or other structures and for the licensing of house-movers, plumbers and sewer tappers."

We urge that this law be enacted in the code placing the department of building under the head of the department of public safety, for the reason that we feel that the best interests of the building business would be subserved if it was in the hands of a non-partisan board, as is provided in the Nash code.

Mr. C. W. McCormick, of The Cleveland Stone Co.: Mr. Chairman and Gentlemen of the Committee: The amendment offered to section 7, sub-section 13, was suggested through the experience of builders in different parts of the state with regard to billboards, fire escapes, etc. It seemed to our committee to be desirable that this amendment should be made so as to enable building inspectors to properly superintend the erection of buildings. It is well-known that many fires occur in buildings and great loss of life occurs as a result of the placing of elevators and stairways adjoining, whereas if the elevators were properly protected and the stairways placed in some other part of the building this loss of life particularly would be avoided.

In the matter of billboards and signs they are often permitted to disfigure the whole landscape and under the present law it is difficult to regulate them. Some law should be enacted to enable the inspectors of buildings to regulate such structures.

Mr. William H. Hunt, president of the Builders' Exchange, Cleveland: Mr. Chairman and Gentlemen of the Committee: I am heartily in accord with the resolutions presented by Mr. Schoedinger and the proposed amendment to section 7, sub-section 13. There is hardly any interest in the state greater than that of building, and there is every reason why there should be created some such board as is suggested not alone for the supervision of the construction of new buildings, but for the tearing down and removal of buildings that are insecure. The question of proper survey of ground, the issuing of permits in such a manner as will bring before the municipality proper valuations, and a great many other things the building department can do, and if it were not for the fact that it is intended to keep down the number of boards rather than to increase them. I should feel that that work was sufficiently important to create a special board for it.

Mr. Silberberg: The previous speaker said this matter should come within the functions of the board of public safety. Would you prefer the board of public safety?

Mr. Schoedinger: We would, because it is very closely allied to fire protection. In Cleveland this department is under the fire department and in Columbus it is under the head of the director of public safety. We would like to have that incorporated in the Nash code.

The Committee then adjourned to meet again at 7:30 P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

TUESDAY, September 9, 1902, 7:30 o'clock P. M.

The Special Committee on Municipal Codes of the House of Representatives met, pursuant to recess, the subject for consideration being Taxation and the General Principles of Municipal Government.

On roll-call, the following members were present:

Comings,	Worthington,
Guerin,	Denman,
Price,	Hypes,
Cole,	Willis,
Williams,	Stage.
Metzger,	Bracken,
Thomas,	Ainsworth,
Allen,	Maag,
Silberberg,	Huffman.

The Chairman: Mr. Peter Witte, of Cleveland, is present this evening, in the interest of some taxation questions, which he will discuss to the committee. Mr. Witte will address us.

Mr. Witte: Mr. Chairman, Members of the Committee:—To preface my arguments, I would desire more to talk on the question of taxation, dealing with the general question of taxation, also, with that of special improvements. The Chamber of Commerce, of Cleveland, has had a delegation down here—and in preface, permit me to say that it is very seldom I find myself upon the same side of any proposition, as the Chamber of Commerce—but in this instance, it is so; I find myself on the same side with those gentlemen, and I presume you will find every person in the city of Cleveland on the same side.

The question of municipal government, as we understand it in Cleveland, is not a debatable question, among our citizens. For thirty years, we had what many of the cities in the state are experiencing—board rule. Up to eleven years ago, we had board rule. I do not know how

the federal plan would work in any other city, but as far as Cleveland is concerned, I feel safe in saying, that for the last eleven years Cleveland has had the best form of municipal government to be found anywhere in Ohio — anywhere in the United States, I will say. It is a form of government that centralizes and places our power in the hands of the mayor, and when the people become tired of a mayor, it meant voting upon candidates, and placing that mayor out of power, and it meant putting out of power the entire machinery of such a mayor. Cleveland is entirely sick and has been for a long time, of board rule; hence, the federal plan, and while Cleveland might have grown, might have been of greater size to-day, if we had had board rule, yet it is true, that the date of Cleveland's greatness commences with the inauguration of the federal plan. I presume, if you canvassed the city to-day, you would find the people who have been ousted by the expression of the public will, the only people in the entire community who favor any plan other than that known as the federal plan. We have had experience with various kinds of machines, and while other cities have, at times, rebelled against boss rule, while other cities have, at times, entered a protest against the existing order of affairs, they have been powerless, owing to the system of government under which they were working. Without any exaggeration, I say that Cleveland is a pattern community of which any citizen may well be proud. I do not think there is a community in the United States where the people are as capable of administering municipal affairs as they are in the city of Cleveland; yet, at the same time, I claim that had we had a plan other than the federal, we might be as powerless as are the people of Cincinnati to-day.

In one branch of our government we are powerless; where we have board rule, as it may be termed, in our county affairs, for of course, our county commissioners are elected, as are those of other counties, one member's term expiring each and every year. Let us, for example, take the year 1899, when we had the great revolt against boss rule, Democratic and Republican, in the city of Cleveland, when standing alone and unaided, the mayor of Toledo carried the city of Cleveland by a majority of 8,000 over the Democratic and Republican nominees for governor. It was a revolt, pure and simple, and had the people so desired, had they placed in nomination for county commissioner a man who stood opposed to the general order of affairs, he undoubtedly would have been successful. But the next year the same people, who were free from boss rule, who detested the word and the term of "boss,"

saying "We will not stand for it," were divided as were the people all over the United States, upon the question of imperialism or anti-imperialism, and political prejudice ran so high, that the people voted according to party lines, and the county commissioner went in.

To repeat what I have already said: I do not often find myself upon the same side of any proposition with the Chamber of Commerce, but upon this proposition here, we find ourselves on the same side, and I think the same can be said of every citizen of Cleveland.

What brings me down here, is mainly the question of taxation, as a general proposition, and the question of levying assessments to meet the payment of public improvements, made in the shape of sewers, pavements, curbing, sidewalks, or whatever it may be. I do not know whether the governor's code, or the Guerin code, contemplates a change from the present order; if so, and the change is along the line which I believe it should be, I am in favor of it; if not, I am opposed. Under the going scheme, under which we are working now, the construction of a sewer, the laying of pavement, the building of a curbing, means an assessment that the people are compelled to pay, not by the value of their property, but by the number of feet they own fronting upon the street upon which the improvement is to be made.

Before I go into this, I have a few blue prints that I had made, and these I will have passed around among the members of the committee, to illustrate the points I want to make.

I take it for granted, as far as I have been able to learn, that there are not two political communities in the state of Ohio, where, under the existing statutes, in spite of the provisions of the law, that improvements in the way of sewers, pavements, etc., are paid for in the same way. In Cleveland, we have in the office of the Director of Accounts, a man who has held the position for ten or twelve years, who, in spite of the change of administration, has continued in office, owing to the knowledge that he has in levying assessments against property for the payment of proposed public improvements, and while he is able, perhaps more than any other man in the state, under the going scheme, to levy the taxes somewhere near the point of equality, the method still falls far short of what it should be.

From the print I have handed you, it will be noticed that on one side are ten lots, that are equal in depth, 100 feet; they also have an equal frontage of 50 feet; on the other side are lots of varying depth, but also identical in frontage, 50 feet to the lot. Now, to build a sewer,

under the statute we have, the municipality will levy a tax of \$2 per foot, front, no more; if you levy more tax, it must come out of the tax paid by the district. Recognizing the theory that the sewer is not for the individual benefit of people who own property abutting upon the street, but that it is constructed from a sanitary point of view, and that the man who lives in the western end of the city benefits as much by the construction of a sewer in the eastern end, as does the man who lives and owns property there, it has been deemed wise that all should share, in a measure, in the payment for that sewer. Now, in constructing this sewer at \$2 per foot front, there are 1000 feet fronting on this proposed improvement. At \$2 per foot, it is \$2,000 or \$100 upon each lot; on the lots on the north side of the street, excluding the increased value of the two corner lots, this falls alike, \$100 on each lot. On the other side, you will notice it also falls alike. What, now, is the difference in the value of this property? The foot frontage scheme is a scheme that only can be advocated at the present time, upon this theory, that for fifty years, or sixty, or seventy years, it has been the going scheme, and that to change it now might work an injustice; but as I take it, you are building the basis of a new municipal code, and because a thing has been in existence a long time — though wrong — is no good reason why we should continue to do that thing; rather, we should start out afresh, in the right way. Therefore, gentlemen, let us start right in this new municipal code, by levying against the property in proportion as that property is valued.

Now, on these streets marked "Easterly," you will notice the lots vary in depth from 60 to 200 feet. Now, if A should be the owner of the fourth lot from the corner, that is only 60 feet in depth and has 50 feet frontage, he certainly cannot receive as much, in proportion, as B, who is the owner of the second lot from the corner that has a depth of 190 feet, if a sewer is constructed. Now, if A is compelled to pay — as under the going scheme — \$100 for that sewer, and he only has a piece of property 50 by 60 feet, which will hold one house, it is certainly unfair to A, in comparison with B, who has a lot 190 feet in depth, capable of carrying two houses, or perhaps three, which means that there will be twenty to thirty people on B's lot — it is certainly unfair to A that he should be compelled to pay as much as B, it certainly is fair to say that B ought to pay more for the construction of that sewer than A.

Now, you will notice that commencing at the deepest lot on the east side of the street, I have assumed that the property on that street is worth \$100 a foot, that is, for 100 feet in depth; therefore, a lot that is more than 100 feet in depth, must be worth more, and every lot that is less than 100 feet in depth, should be worth correspondingly less than \$100 per foot.

Now, A's property on this street is but 60 feet in depth; it is therefore worth 71 per cent. as much as C's 100 feet; the total value of A's lot is \$3,550; the total value of B's lot, second from the corner, is \$6,650. In justice to A, if you levy a tax of \$2,000 to meet the expense of that sewer it would be 18 1-7 mills upon the value of the property fronting upon that street; therefore, instead of A paying \$100, the same as B, A ought to pay \$64.68 and B ought to pay \$121.16.

Now, right in that connection I wish to say that as the law is which you contemplate, as I understand it, on the question of sewers, following out the present statute, that no more than ten per cent. may be levied against any property for the purpose of building a district sewer, if it should be essential to build a sewer there that would cost \$4 per foot, only half of that, or \$2 per foot could be levied on that property, and the other half would have to be levied, or met, by the people living within this sewer district. Now, under the governor's code, an injustice is done to the people who are industrious, the progressive people, the man who takes a vacant lot and erects a house upon it is the man you are going to punish, under the Nash code—he is the man you have been punishing under the statute of to-day.

If A and B are both the owners of 50 feet front upon the westerly side of the street, both 100 feet in depth, each lot worth \$5,000, let us assume that both are upon the duplicate, as they ought to be, at the true value; that A, being an industrious man, erects a nice house at, perhaps, three times the cost of the lot; the sewer to be built in that street being a sort of a district sewer, they levy a tax of ten per cent. above the \$2 to meet the increased expenditure. A, who has a house on his lot worth \$15,000, will pay more tax than B, who has an unimproved lot. Now, there is no reason why A, who has built a house, should pay more for that sewer than B, because B has a lot of identical size and value, adjoining A, and it is only a question of time when B, also, will erect a house upon his lot; but he may erect that house after the five years have passed, in which the municipality is collecting the tax for the pay-

ment of the cost of that sewer. It follows that A will pay three times as much tax as B, who, after the construction of his house, will have just as much benefit from the sewer as A.

As I said before, I have never heard the present theory of levying a tax upon foot frontage defended, except upon the theory that it may be an injustice to people who are now living in a district and who have already paid, not only for their own sewer, but for the large sewers in their district, that it would be an injustice if you place the tax for the construction of that sewer upon the general duplicate. But that again falls flat. In Cleveland, we are building a large intersecting sewer, a large trunk sewer that is to carry off all the sewage and empty it out into the lake. The intersecting sewer is built from the proceeds of a tax received from levy upon the general property of the city of Cleveland. But my objection to that is, that the tax levied against, not the property benefitted, but against the industrious people who have improved their property. Again, to show you another phase of it: If you lived in Cleveland and had personal property, invested for instance, in boats upon the lake—it is only ten years ago, in the city of Cleveland we had \$6,000,000 upon the duplicate; to-day, if you go over it, you will find less than \$1,000,000 upon the duplicate—you would be subject to a special tax. Under the going scheme, it means that every man who may tie up his vessels in the city of Cleveland in District No. 1—where the largest sewer is constructed—and have his property listed for taxation in the city, if he makes a return on floating property of \$100,000, that he is compelled to pay on that \$100,000 a special tax for sewers. A great cry has been raised by the owners of these vessels because of this tax on floating property, and those people are hardly to blame. One of the largest companies has gone to a little hamlet outside the city, put up an office, advertised as the office of the so-and-so steamship company, and its property is listed there. So with others.

The owners of personal property have been compelled to pay for the construction of large sewers, which has resulted in numbers of people taking their personal property, floating property, away from Cleveland and listing it for taxation in one of the villages of the county.

My main purpose in coming before you to-night, is, that I wish to present these views to you, and I hope that, for the construction of sewers, instead of levying a tax on the foot frontage, that it will be levied against the value of the property, for this reason: If, in the city of Cleveland, or in any other city, the construction of a sewer, or the laying of a pave-

ment, or the building of any public improvement in the city, be made not by the foot frontage tax, but by the value of the lots upon the street upon which it abuts, I say to you, we would have an equal and just distribution of taxes. The present inequality that we have, could not exist under such a scheme. If the people owning the property on the east side of the street were compelled to pay for their public improvements in the manner outlined, there never would be such an unequal distribution in taxes as we have in the city at the present time. I recognize that the question of taxes is a State one, therefore, demanding to be taken care of by the counties, which are the political sub-divisions of the State, but at the same time, gentlemen, I realize that the time has come when our municipalities are larger than the counties—our municipalities are larger than the State. It requires more to run the city of Cleveland than the state of Ohio, and the great trouble has been, in the administration of affairs in our municipalities, that they are not clothed with sufficient power. If you will incorporate into your code the scheme as I have outlined it, I say to you it will bring home to the people an inequality in taxation upon their property in the city of Cleveland at the present time, and I presume it is the same throughout the State of Ohio, in the cities. We have \$500,000,000 of taxable property; that entire property is on the duplicate for but \$143,000,000. That will show the great discrepancy that there must be when I tell you that there is some property on our duplicate at 465 per cent of its value, and some that is taxed 2 per cent of its value. This plan will help the people to have a board of equalization controlled by the people. It was a question of taxation that resulted in the adoption of the Federal plan of government in the city of Cleveland. If the board of equalization had not attempted to make the public service corporations pay in the same rate upon their property that thousands of other people were paying, the ouster proceedings would have never been instituted, and the only way that the people may have an equal and just distribution of their taxes, is by throwing the responsibility upon the officers that they elect, and there is no man who will dispute the proposition that every man should pay to the community to the extent of the value of his property. I think that every municipality recognizes the fact that the question of taxation is a State question; that, when this State, through its board of Decennial Appraisers, say that the city of Cleveland should have a duplicate of \$143,000,000, that the city of Cincinnati should have a duplicate of \$174,000,000, we should abide by that; but I believe each and every city ought

to have a board of equalization appointed by the powers that be in the State, for the purpose of equalizing that duplicate upon the figure as set down by the Board of Decennial Appraisers. There are 101,000 subdivisions and lots in the city of Cleveland, owned by 82,000 different people, and I say to you to-night that not 2 per cent of the property of equal value is appraised alike. This not only means that the property of the poor is appraised high, but I can show you hundreds and hundreds of pieces of property, lying side by side, where one piece is appraised at 25 per cent and the other at 85 per cent. There are hundreds and hundreds of pieces of property like that in the city of Cleveland. I can show you property that in the open market I can find you bidders for at \$465,000, that is on the duplicate for \$32,000. There are hundreds and hundreds of pieces worth \$500 that are upon the duplicate for \$600. Further than that, in the way that we appraise property, we remove the responsibility from the man that appraise sit. Once every ten years we proceed to the duty of electing a man who is an appraiser. He proceeds to appraise the property without any individual judgment or system, and three months after the completion of his duties, nobody knows who was the appraiser. We all, when it comes to the appraisement of real property, recognize that the election of forty-two men, in a city like Cleveland, means that the property of forty-two different wards will be appraised by forty-two different men, with varying judgment. And again, the Board of Decennial Appraisers is elected by the city council to correct the inequalities: that board, not being elected by the people, not being responsible to anybody; it is elected by the city council. A case within my own personal knowledge is that of a friend of mine, who is the owner of a tract of land worth \$60,000 that the appraisers reported for \$4,400. He petitioned that his property be increased in valuation, but to his demand, the board turned a deaf ear, because they knew that the raising of the valuation of his property meant the same thing as to the property of the American Steel Wire Company.

The legislature, at its last session, gave the people of the city of Cleveland a board of review. If the members of this body could have foreseen the result of that board's action, I am satisfied the bill would never have passed.

The only way we can come to a just and equitable distribution of the taxes to be borne by property in the city, is to confer upon the mayor of every municipality the power to appoint a board of equalization. Then you have some one to hold responsible, and I say to you that then, when

the election comes around every two years, you will have the equalization before you in the election, and if the people have elected a mayor who has appointed a corrupt board, you have him to hold to accountability for it, and the fact will be taken into account when the election comes around. Turn that mayor out of office and put a new man in.

In 1880, when we had the first appraisalment under the Decennial Appraisers, the result was bad. It 1890 it became worse, and in 1900 it was still worse. Under the theory that property is taxed at 60 per cent of its value—in conflict and defiance of the law of Ohio, which says it shall be appraised at its true value in money. The people of the city of Cleveland to-day are defrauding the rest of the people of the State of Ohio, out of a duplicate of \$90,000,000. The people of Cleveland have no desire to cheat the people of Ohio, but under the law, each and every county tries to secure as low an appraisalment as possible, in order that it may throw the burden of State taxes upon its neighbor.

I hope, as I said before, gentlemen, that this question of taxation, which, at the bottom, is the thing that brings you here, will receive careful attention at your hands; that you will see that the machinery is placed in the hands of the proper officials in order that property may be equalized, that all property in any municipality, may pay its just and appropriate and proportionate share of the taxes levied against it.

It is no good reason that, because this thing has been going on for fifty years, it shall continue for fifty years longer.

If there is any question that any member wishes to ask, I shall be glad to answer.

Mr. Silberberg: The method of taxation that you have outlined in the blue prints,—is that only for the purposes of building sewers?

Mr. Witte: No, I would say this would be, as my after remarks show, for the purpose of putting a just proportion upon each property, for sewers, or pavements, or any other purpose.

Mr. Silberberg: I would coincide with your judgment, if it were only for sewer purposes, because as you state here, a man owning a 200 foot lot certainly could get several houses upon it, and would derive more benefit than the man who owns a lot of only 100 feet. I admit that. But where is he benefited more by the building of a pavement?

Mr. Witte: Well, I am glad you have drawn out that feater of it. Let us assume now that here in the city of Columbus, your principal street, High street, is an unpaved street. I presume that High street has property worth \$2,500 or \$3,000 per foot, down in the main central part of the

city; but say, three miles from here—I am satisfied there is property out there that is not worth over \$25 per foot. Now, under the present system, the paving of High street works an injustice; for instance: This property down here, worth \$3,000 per foot, and that property three miles east or west, which ever it is, worth \$25 per foot are both assessed, or taxed for the construction of that pavement. The construction of that pavement will benefit this property down here a hundred times as much as it will the property three miles out; because High street is a thoroughfare and it enables people to come down here easily and do business in the center of the city,—it brings business. Therefore, a tax of \$2.50 per running foot upon property worth \$3,000 and a tax of \$2.50 also upon property worth \$25 per foot, is manifestly an injustice to the latter; it is a burden on the man who owns a little home three miles out from the business center.

Mr. Silberberg: We were speaking of adjoining lots, we were not speaking of property located in different parts of the city?

Mr. Witte: Do you mean that one man has a 60-foot lot, and his neighbor, who has a 180-foot lot adjoining, for instance? You will concede, Mr. Silberberg, that the man who has the 180-foot lot has the advantage of being able to build two houses thereon?

Mr. Silberberg: I admit that part.

Mr. Witte: Now, as to the paving. If you will concede with me that the man who has the 180-foot lot can build two houses, thus securing additional income in the way of rental, from that lot, it also must follow that the property has received greater benefit, enjoyed greater advantage, has increased value; because the house standing back of the first house on the 180-foot lot, will be worth more by reason of the pavement on that street. If you can imagine a case where a landlord would not raise the rent, after the paving of a street in front of his property, which had before been unpaved—I would like to meet that man. Then the pavement is a sanitary measure, as well.

Mr. Price: Suppose you took the 60-foot lot and the 90-foot lot?

Mr. Witte: Yes; the man with the 90-foot lot receives more benefit, I would say; while it is true he has only thirty feet more, yet he has the advantage of having a lawn thirty feet greater.

Mr. Price: You pave the street, and the man having the thirty feet more, pays for that many more feet; you don't see any great injustice in that, do you?

Mr. Witte: I do; because the man having the 90-foot lot ought to have to pay more, because of the increased benefit.

Mr. Price: You would include the building, would you?

Mr. Witte: Yes.

Mr. Comings: You presuppose the fact that a sewer, for instance, on the deep lot of 180 feet, are out in the street in front — under the street, rather?

Mr. Witte: Yes.

Mr. Comings: That is not the way they are usually built.

Mr. Silberberg: As to the sewers, your theory, in my opinion, is correct, but as to sidewalks, I cannot agree with you.

Mr. Witte: I do not think I said sidewalks; but as to pavements, street pavements. As I understand the thing, a pavement is the same as a sewer in one regard; it is as much of a sanitary regulation as the sewer. Pavements are not built for the purpose of making travel easy, solely, whatever the common belief may be. The theory of laying a pavement is simply to hold down and prevent disease; not alone to facilitate travel, but rather, the theory of making it easy to prevent disease, to hold down filth — that is the purpose of paving.

Mr. Silberberg: This man, according to your print, has 50 feet front and 200 feet depth; this other man, 50 feet front and 100 feet depth; this man who has the 200 feet in his lot and two houses, perhaps, receives more than the man who only owns 100 feet; I concede that as to sewers; but when it comes to paving, or making streets, the frontage is alike?

Mr. Witte: If you will concede with me that the man who has the 200 feet in depth, has an increased advantage, on the theory that he can erect two houses, doesn't it naturally and logically follow that if he erects two houses, they both enjoy the pavement as much as they enjoy benefit from the sewer?

Mr. Silberberg: That is true; they enjoy the pavement, but not any more than the man who has the adjoining lot?

Mr. Witte: But you will concede there is only one enjoying the benefits on the shallow lot, while there are two families enjoying those benefits on the lot 200 feet in depth, therefore the advantage to the property is greater.

Mr. Silberberg: It is a question to be thought over; but in my opinion, I do not think the difference should be in the valuation of the lot. I will concede your position as to the sewer.

Mr. Denman: You say, Mr. Witte, that this plan as outlined here, shows your method of making assessments in Cleveland?

Mr. Witte: Yes; that is the scheme upon which we are working now. I say to you that you can take a dozen people in the city of Columbus, and in six months' time, under this scheme, they can get within six per cent. of the value of all the lots in Columbus, and get it accurately.

Mr. Denman: You do not understand, by law, it is necessary to follow this plan, do you?

Mr. Witte: The law simply leaves it to the judgment of men. The law says our property shall be appraised at its true value in money; the scheme of getting at that varies now; some men might guess at it, but under this plan I propose, it does away with guessing.

Mr. Denman: You cannot get any scheme, can you, but where the valuation will have to be left to the opinion of men?

Mr. Witte: Well, that is all that value is; you will give \$100 for a lot, think that I will give you \$110 for that same lot.

Mr. Denman: In our city, Toledo, we assess according to benefit, and I know from actual experience, that the committees appointed by our council, always take into consideration the size of the lot, that is, its valuation, and they say that a lot such as one of these shorter ones should not be assessed as much as one of the longer ones.

Mr. Witte: Then we agree upon that proposition?

Mr. Denman: That is what we think, and that is the law. The assessment must be in that way; so that at the present time, under the law, there is only one way, and that is according to benefit. If they say a lot is benefited \$25, and they want to divide that up according to feet front, and say fifty cents per foot, they can do that; yet it is always according to benefit, and they take into consideration the value of the lot.

Mr. Witte: On the benefit conferred — it is simply upon the proposition of how much the lot is worth; the benefit accruing to the lot is according to its value.

Mr. Denman: Take your 60-foot lot here, for instance, as compared with your 90-foot lot; you have a value on one and the other?

Mr. Witte: Yes; certainly.

Mr. Denman: Would you feel that you must regulate your benefit there, when it is regulated entirely by the value?

Mr. Witte: I would say this: This schedule I shall give you is absolutely correct; it is no guesswork. To establish this, we took over thirty thousand transfers in the city of Cleveland, and we find this: That where A, who was the owner of 100 feet, if the property sells, receives \$100 a foot; that B, who is the owner of 150 feet in depth on the same street, receives \$120 per foot, and that C, who had 60 feet, receives \$71 per foot. That is the schedule, as based upon the meeting of the minds of the buyers and sellers.

Mr. Denman: Do you not think that in the case of the man who owns the 60-foot lot and the man who owns the 90-foot lot, so far as the frontage is concerned, derive equal benefit, that one is benefited as much as the other? Must we not take into consideration that both have the same frontage, and that, so far as frontage is concerned, both have the same value?

Mr. Witte: Of course, I do not agree with you there; but if you contend for that proposition, you will come to my proposition on the other fund. You will agree with me, in the first place, that the man with the 60-foot lot receives as much benefit as the 90-foot lot from the sewer, and yet, when it comes to the going scheme of taxing, if you build a sewer in that street, if you build more than a 24-inch sewer, it will cost \$2 per foot, or, if you build a 4-foot sewer, it will cost \$4 per foot, and under the law, you will have to levy a tax in the sewer district to meet the increased expenditure for the building of that sewer; you will have to levy a tax for that increased expenditure for construction, not by reason of the benefits conferred, but upon the value of property.

On motion, the committee went into executive session.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

EXTRAORDINARY SESSION.
SEVENTY-FIFTH GENERAL ASSEMBLY,
WEDNESDAY, SEPTEMBER 10, 1902.
9:00 O'CLOCK, A. M.

The Committee met pursuant to adjournment, all members being present with the exception of Messrs. Guerin and Gear.

The Chairman: The question for discussion this morning is a continuation of yesterday's programme, as some of the speakers on the topics assigned for yesterday were perforce crowded out. There are present this morning representatives from the Taxpayers' Association of Cincinnati who wish to be heard.

Mr. Fred B. Tuke, of the Cincinnati Taxpayers' Association: Mr. Chairman and Gentlemen of the Committee: While the legal representative of our association and several members of the committee do not appear, I desire to take their place as far as I can. I will say in the beginning that this committee deserves the commendation not alone of the taxpayers' association but of the people of Ohio for giving everybody a proper hearing here and affording every opportunity for a full expression of opinion on the various subjects under consideration.

We as an organization do not care which code you adopt so that you adopt a code that is good and practicable and which will insure good, efficient and economical government for every city. We would like to have the cities managed upon a business basis, and any measure that will bring that about will suit us. The governor of the state certainly deserves commendation for preparing a measure for you to start with and upon which you can build a practical measure which will suit the greatest number of people.

Herewith I beg leave to submit for your consideration a few suggestions pertaining to House Bill No. 5. While not being prepared to say that these changes will make this bill in every respect satisfactory, yet

these suggestions may do their share toward solving this very important problem now before your honorable committee :

Add to section 36, after the word "force" in line 435, "but all such heretofore-granted privileges shall in every respect be subject to all of section 31 of this act."

Add to section 40, after the word "stating" in line 455 the words, "in itemized form."

In section 72, line 771, strike out the word "two" and insert "one."

In section 72, line 772, strike out the word "fifteen" and insert the word "twenty-five."

In section 72, line 774, strike out the word "fifteen" and insert the word "twelve."

In section 72, line 775, strike out the word "five" and insert "three."

In section 88, at the end of line 976, add the words "in writing."

In section 89, at the end of line 989, insert the words "in writing."

In section 89, line 1,000, after the word "city" add the words "or without in case there be no bank within the limits of said city."

In section 89, at the end of line 1012, add the following: "At the request of at least five per cent. of the citizens of any municipality, submitted in writing, council shall act in accordance with this section in providing for such depositary."

In connection with section 92 I would suggest that the health department, hospitals, house of refuge and other charitable and reformatory institutions should be placed under the control of the directors of public safety.

In connection with section 99 the enclosed merit system should be added, or another in a more practical form.

THE MERIT SYSTEM COMMISSION.

Each system shall have a merit system commission composed of the mayor, city treasurer and president of council, which shall adopt rules and regulations for a practical and effective merit system according to which all examination, appointments, promotions and removals shall be made of all employes in all departments of the municipal government other than those otherwise provided for. The rules and regulations so adopted shall be promulgated and be in full force and effect not later than thirty days after the organization of said commission and shall among other things contain provisions which will effectually insure the following results :

(a) That no appointments, promotions or removals shall be made for other reasons than proficiency and be made without regard to political affiliations.

(b) That all employes shall retain their position during good behavior and efficient service, and in case of charges being preferred against any employe by a member of the merit system commission, or any other citizen, the accused shall be given a full hearing by the commission in open session, after which the decision of the majority of the commission shall be final.

The rules and regulations adopted shall apply to every subordinate employe in said departments and the examinations shall be open to any person who may desire to apply for a position in any of said departments. Those obtaining the necessary percentage shall receive appointment in their numerical order of examination.

All present employes under the board of public service, or its predecessor, shall hold their respective positions until such time as the merit system commission is ready to supply the necessary number of employes from the examined and classified list, but in no case shall this delay be more than six months after the organization of the merit system commission.

The rules of said commission shall also forbid the solicitation or payment directly or indirectly of assessments to any political party or committee for any political purpose whatsoever.

This commission shall have authority to hire and discharge such clerks, stenographers and other assistants as in their judgment they may deem necessary and to fix the compensation of such employes which shall be paid out of the city treasury on the order of said commission.

Examinations shall be held at least once every three months at such time and place as the commission may determine, due notice of which shall be given by advertisement in two newspapers of opposite politics and of general circulation in such city for a period of five days prior thereto.

It shall be unlawful to pay any salary to any employe not appointed according to the rules of the merit system commission, after the first six months of its existence.

In connection with section 108, a merit system clause should be added in the following and more practical form:

The directors of public safety, not later than thirty days after their organization, shall adopt and promulgate a regular set of rules, for the

carrying out of the merit system in practical form, these rules and regulations among other stipulations shall contain the following provisions:

(a). That all appointments, promotions or removals shall be made for no other reasons than proficiency and be made without regard to political affiliations.

(b). That all employes subject to control by the board of public safety shall retain their positions during good behavior and efficient services, and in case of charges being preferred against any employe by a member of the board or any other citizen, the accused shall be given a full hearing by the directors in open session, after which the decision of the majority of the members of the board of public safety shall be final.

These rules and regulations adopted shall apply to all subordinate employes under said directors of public safety, but if at the time this act takes effect, there be any policemen or firemen in any city, who have been selected under the provisions of a merit system for the selection of such officers, the commission may dispense with the examination required by this section of such policemen or firemen in office when this act shall take effect, and such policemen and firemen may be retained, but shall in other respects be subject to these rules and regulations; but the directors of public safety shall not dispense with the examination for the promotion of such officers. These examinations for employment in any of these departments shall be open to any citizen who may desire to apply for a position in any of the above departments. Those obtaining the necessary percentage shall receive appointment in their numerical order of examination.

The rules adopted by the directors shall also forbid the collection or payment directly or indirectly of any assessments to any political purpose whatsoever.

All present employes in any department under control of the directors of public safety, or its predecessor, shall hold their respective positions until such time as the directors are ready to supply the necessary number of employes from the examined and classified list, but in no case shall this delay be longer than three months after the organization of the directors of public safety.

Examinations shall be held not less than once every three months at such time and place designated by the directors of public safety, due notice of which shall be given in two newspapers of opposite politics and of general circulation in such city for a period of not less than five days prior thereto.

It shall be unlawful for any municipal official to approve or pay any salary to any employe in these departments not appointed according to the rules of the directors of public safety, and in accordance with this act, after the first three months of its existence.

The Chairman: The programme for the committee to-day is the subject of franchises. Inasmuch as the committee has informally decided by unanimous consent that the present laws on the subject of franchises will not be changed, I think it only right to inform the speakers who are to address us that this action has, I will say, informally been taken. No formal action has been taken by the committee, but it seemed to be the consensus of opinion in executive session the last evening they met that no action should be taken.

Mr. Newton D. Baker, of Cleveland: Mr. Chairman and Gentlemen of the Committee:

Almost every fresh newspaper that comes to us brings us either a new code bill that has been introduced or proposed to be introduced, or some new provision upon the franchise question, which, it is believed, by the reporters, at least, at the time, will ultimately be incorporated into the code. For that reason we are somewhat adrift, and I confess myself a little astonished, taken unawares, as it were, by the statement of the chairman this morning that the committee has substantially agreed to leave unaltered the existing statutes on the subject of franchises. I wanted to look at the legal side of the franchise question. I understand from what the chairman says that this session is limited to a discussion of franchises. For that reason I feel that I ought to apologize for trespassing upon your patience, but I do want, as a citizen of Cleveland, to express approval of the federal plan of government.

I am very far from saying that this legislature should impose upon other cities which do not want it a federal plan, but you should be careful and not take away from the cities which claim to have a federal form of government that which they have used very successfully. A very distinguished statesman told me a few days ago he had no foolish opinions on this form of government, that it did not make much difference whether we had one form or another, and in a certain sense that may be true, and yet, to use a homely illustration, you can sharpen a lead pencil on a grindstone if you stick to it long enough, you can use any sort of inefficient instrument to accomplish any purpose. So far as the people of Cleveland are concerned, to give them a board plan of government, to give them a

plan of dispersed and divided authority and responsibility, is like giving them a grindstone to sharpen a lead pencil, they don't know how to use it. It has proved ineffective when applied to their city affairs; you are turning that city over to a thing that it does not want and which it does not know how to use. For my own part I do not believe and never have believed in divided responsibility of any sort. I don't think that man has, after disinterested investigation, found a divided and double responsibility that amounted to anything at all. The only case I know of in nature — and we take our best illustrations from nature — equipped in one organism or animalism with two heads, was the famous case of the two-headed calf, and it lived only long enough to be pickled in alcohol and put up in a museum as a monstrosity.

You are proposing to make of the government of a city a two-headed calf. We know its form and we don't want that back again.

Passing to the legal aspects of the franchise question, there has been a great deal said in the newspapers and here, and the whole state is abuzz with the ambitions and interests of various important persons who are interested in street railroad properties, and it is rather unfortunate, I think, that the political atmosphere of Ohio is now clouded by this uncertainty as to whether men who represent us in prominent political capacities are speaking as private citizens or as political personages. However that may be, I take this much for granted, that I am now speaking to men chosen out of the entire state of Ohio as trustworthy enough and capable enough and competent enough to safeguard the interests of all the people.

That being true, you look at the streets of great cities as a property, you provide in every form of franchise that has been proposed from time to time some method by which a certain benefit may accrue to the cities for the use of those streets. It is admitted to be true on every hand that the privileges of the streets in the city of Cleveland and the city of Cincinnati, which are either involved in so grave doubt because of judicial decision or else are about to expire, are worth more in actual money, can be sold in the market for more than the entire debt of those two great cities.

Now, that being true, you are providing a law by which those cities shall be made fit instrumentalities for the administration of a great trust. The people of the city of Cleveland and the people of the city of Cincinnati own those properties to-day. Somebody read to me—I don't know who it was or where I heard it—the most monstrous proposition that I

ever heard, I think, since I was old enough to hear propositions, some kind of a curative law by which an iniquitous franchise in Cincinnati, which had been overthrown by the courts because it was a brazen and shame-faced violation of the constitution of the state, was by this legislature to be re-granted to those who had originally corrupted the constitution there and gotten that vast property. I only refer to that as showing the kind of dangers that beset this committee and that beset this legislature. Men of selfish interest, corporate interests, which have, as is perfectly natural and proper and it is not subject to criticism, only their own interests at heart, are here around you on every side, trying to pervert and divert the clear vision of this committee and this legislature from a proper appreciation of their character as trustees of the people.

Now, what is the exact and existing situation with these great properties? We have street railroads. They were built very largely at a time when they did not pay very much, when they were not considered important. Projectors came along who were willing to lay out a new road. The city comes along and builds up that road and makes it worth vast sums of money. The city has never gotten anything out of it, the city owns it and after the expiration of the original limitation ought to have a right to get something out of it. The only way by which the city can properly and in a scientific way get an advantage from the granting of a franchise is by putting the proposed grant up to competitive bidding, by throwing it into the market and getting all the capital that is willing to invest in that sort of enterprise to come in and say what advantages it will give the people for that grant.

We have now sections 2501 and 2502 of the existing statutes and those which follow them, which are portions of them, down to section 2505*f*, I think, and then we have another body of law, section 3437, as the committee will remember, and some sections that are put in there where the highways in the county and the streets in the city are treated together. We have, then, as it were, two bodies of law, with separate and independent histories, enacted at different times, growing out of different conditions, so that when a franchise is attempted to be granted in a city now, those who are engineering the grant and are anxious it should go through are obliged to steer clear of Scylla of 2501 on the one side and the Charybdis of 3437 on the other. The principle of House Bill No. 5 now under discussion is to adopt a third body of law which retains most of the provisions of section 2501 and following sections and section 3437

and following sections, but adds to the obscurities and complications of these, to the advantage of the present holders of franchises and to the very great disadvantage of those who seek to enter into competitive enterprise with them.

The situation is this: The only way in which the cities which have streets that are valuable for street railroads can get the advantage which they ought to have from the ownership of those streets and those great privileges, the only way in which they can get an advantage out of those privileges, is by having the opportunity of fair, simple, easy, free and open competitive bidding in a free and undisturbed market for the things that they have to sell or grant.

It looks as if in the adoption of three separate and distinct bodies of law, interlacing and adopting some things except where they conflict and repealing others, there were an attempt to involve in obscurity and doubt the way in which a franchise is to be granted, so as to make an impossible thing of a competitive franchise. In addition to that, House Bill No. 5 provides for unbalanced bidding. The only thing upon which a bid may be now is the rate of fare, and I am perfectly satisfied to say that that is a scientific provision. My own belief—it is a social belief rather than a legal one—but my own belief is that the great thing for a city to provide in the enfranchisement of a street railroad is absolutely the cheapest rate of efficient service that can be provided. I have not any sympathy with this provision for getting taxes on gross receipts and for getting all kinds of collateral advantages. I believe that the advantage to be secured is the advantage which comes to the people who ride upon the cars. When you reduce the bidding to a single thing, to the rate of fare, you have a basis of bidding upon which a rational determination may be made by those who desire to compete in that enterprise; but here in House Bill No. 5 it is provided that the council may award to a bidder a franchise which is of the most advantage. I am not using the language of the code, I forget it, but what is of most advantage to the city is determined by one of four or five things or by the sum total of them taken all together.

There is not a man on this committee, there is not a man within the sound of my voice but that knows that every street railroad enterprise in a large city, either in Ohio or out of it, is a scandalous, shameful corrupter of the public morals of the legislative assemblies of those cities. The jails are already filled with people who have bribed councilmen and

aldermen, from little bribes for the cheap fellows to hundred thousand dollar bribes for the big fellows as they are out in St. Louis now on trial. The proposition which is involved in this unbalanced bidding is to make it easy for the public morals to be corrupted by putting in four or five things so that the petted favorite may say he offers the largest advantage. You make bribery and the corruption of public officials easier in that way, and in addition to that, for after all it generally gets into the courts anyhow, you complicate the granting of a franchise by making three or four more reasons for appeals to the courts and three or four more involutions and complications which will perplex the court and leave it to say it cannot tell whether there actually was a fair competitive bidding and fair determination or not.

The plain, the simple and practical thing to do is to pass a law by which the granting of a franchise or the renewal of a franchise shall be put up to competitive bidding on the rate of fare proposed to be charged, and that after that has been done the question of the granting of that franchise shall be referred to the people who live in that community. The people of Cleveland—there are four hundred thousand of them—can not afford to be without street railroads, they must have them to get from place to place, the interests of the city suffer from inadequate facilities of the kind now and we must have them; and so the people of that city would not captiously or frivolously throw aside a grant; but if their agencies were corrupted or if an improvident grant were attempted, or if something was done which was not to the public advantage, they could be appealed to in the last resort to pronounce a final judgment on a thing which affected them more than anybody else in the state. I have coupled the term “renewal” in there with the term “original grant.” I doubt whether it has struck the members of this committee, unless it has been already called to their attention, that the existing law of this state now is about a line and a half in the statute books on the renewal of grants. These grants which I said a moment ago are practically of no value at all for an original grant or a new enterprise, but which become, by reason of the aggregations of mankind around a street railway, of vast and almost incalculable value;—these vast grants are to be provided for by a line and a half in the statute books which empowers the council to renew any grant that already exists upon such terms as it may think compatible with the public welfare.

In other words, the existing law as it is now and the proposals which have been made are simply to this effect: If anybody wants to start a new street railroad enterprise he must come in with his consents before a grant can be made. That gives a competing company, if there be one, an opportunity to buy the people not to consent or to buy some short street through which it has to go and thus effectually prevent the laying out of a road. He must come in with his consents before any grant may be made, he must get his grant through the council and through the courts, and he must effectually take care of all the technicalities that are now provided in two co-ordinate and in some places conflicting bodies of law, and perhaps three, if you adopt House Bill No. 5 as it now stands; and if he finally gets through that much he will have spent much time at least in the legislative halls and in the courts, while if a man wants to come for a renewal of a franchise, rights worth millions of dollars, five or ten millions of dollars, he has simply to satisfy a majority of the council in the city where that franchise is to be granted that the thing which he proposes is for the public welfare.

I profoundly regret that it is necessary to recall to your attention the fallability of common councilmen. The city of Cleveland would have granted an extension of twenty-five years to franchises worth many millions of dollars which would have gone forever from the people of that city, had a corrupt council been permitted to have its way. It just happened to come at the right moment, at a psychological moment, and the public swept the entire body from the council chamber of that city and a new council was elected of a different temper. If we are going to hedge around with difficulties and obstructions on every hand the only thing that can save to the people their rights in these great franchises, then surely it is not safe to trust to a simple authorization of a majority of the members in council the question of granting the only thing that is of any great value, and that is the renewal of these grants after they have come to be of such immense value.

House bill No. 5 provides that no grant can be made except to a corporation or company. It does not provide for a grant being made to an individual at all. That may be a clerical oversight, or it may be expected the courts will interpret corporations to mean an individual, I don't know about that, but it is further provided, as the present law provides, that no grant can be made without an application being originally filed. In other words, the city government of a city which is acquainted with all the needs

of all the people, which is supposed to have, at least, as the vice-regent of this legislative body, the interests of all the people at heart, has no right at this hour under existing statutes, and would have no right under House Bill No. 5, if it were enacted as proposed, to initiate or inaugurate any enterprise for the construction of a street railroad. The people might be utterly crippled and paralyzed for lack of transportation facilities, and unless some company would come in with its application, no possible initiative is left to the city to inaugurate that sort of enterprise. I think it is important to strike out of the existing law or the proposal in House Bill No. 5 the requirement that an application must originally be made. If council determines it is necessary for them to have increased facilities for street railroads they ought to be authorized to advertise for persons to come in and construct a road, just as they are authorized now to ask bidders to come in and bid for waterworks or any other improvement.

There is a provision in House Bill No. 5, in section 31, which I confess I have spent a great deal of time upon without coming to any possible conclusion as to the meaning of it. It seems to provide if the council of any city and a company which is operating any franchise or grant can come to any agreement after the grant has been originally made by which better terms can be afforded to the people, that the city is empowered to accept better terms than originally included in the grant. That is at least a work of supererogation. If a company was disposed to be generous, I think it could be generous without even the consent of the council. But if that section means, as it seems to me, that the common council of a city may relieve a company from the burdens that were contained in its original grant, it should not meet with the approval of this committee.

I have been through one or two franchise fights in the courts. I speak to you as a lawyer as much as a citizen. You are here engaged in a work which is monumental in its proportions, which is important to the welfare of the state, and I may pause to say as a simple citizen I was immensely proud and gratified when I found that the house of representatives of the General Assembly of the state of Ohio was not willing to accept, without examination and without criticism on its own individual part a code bill which was prepared off in another place and sent to them on a silver salver. But however that may be, I am speaking to you now as a lawyer and as a citizen, I am speaking to you because I believe that if you once see the importance of the question involved in this franchise situation you will come up to the full measure of the standard of your

duty in the premises. Your duty does not end with the franchise question or with the code question until you have made it possible for every citizen in the state of Ohio to take the streets of that city and in a simple, direct, plain, unmistakable course, save to the people of that city all their rights in those streets. My own belief is that that can be most effectively done by putting into every franchise grant for the use of the streets the requirement that it shall be referred to the people. For some reason or another reference to the people seems to have a radical sound. There are many people who think that is the initiative and referendum idea of the socialist and that references on questions of that sort to the people are dangerous in some way; but that is a purely local question a question of having those facilities, it is a question in which they are vastly more interested than anybody else, it is a question peculiarly of the kind upon which the people may always be trusted to protect the public interest.

Mr. Price: Suppose that this legislature does pass the so-called curative provision that you said was a monstrous proposition, what if anything do we add to the rights in the property of the people who own the railroad in Cincinnati which they do not now have?

Mr. Baker: My own judgment is that the act would be ineffective to re-grant those franchises, although the right to grant franchises is a legislative right and it might be held by the courts — one can never tell till he has been there and come back — that the legislature was undertaking to exercise on its own initiative its right to grant franchises and was so granting them.

Mr. Price: Last winter there was a bill introduced in the House known as the McKinnon law. I think they started to suspend the rules. I looked at it and said it either meant a great deal or meant nothing. I thought it meant nothing, and it seems the court at Cincinnati practically took the same view. So then in passing this curative provision that we talk about it could not be any heinous act on the part of the General Assembly?

Mr. Baker: My judgment on that question is it means one or the other of two things, — that the legislature of the state of Ohio makes the gentlemen in Cincinnati a present of about fifteen or twenty million dollars, or else makes them a present of a big law suit. If I were perfectly certain that would end with the law suit, my professional feeling would lead me to advise you to pass the law, but I would be frank to confess I would be desperately afraid to trust it.

Mr. Price: I practically agree with you that the act, in my judgment, does not amount to much, and on the other hand I think that the courts will not turn those people out of their franchise and their rights there without consideration, if they ever go into it.

Mr. Baker: I think we are entirely at one, and I am frank to say if the present owners of those franchises knew where their true interests lay they would rely not so much upon the favor of this legislature or of the council in the city of Cincinnati, but in the love of justice and fair play of the people of Cincinnati, and if you will provide a way by which that company can get to the people they will do all of justice by them.

Mr. Fraser: I understand that you take the position that the only basis for the granting of a franchise should be the rate of fare?

Mr. Baker: That is my belief.

Mr. Fraser: Don't you consider the character of service to be furnished by the street car company is of as much value to the corporation?

Mr. Baker: If you will provide an efficient method by which there may be competition, there will be no necessity of putting into your law any requirement for efficiency of service.

Mr. Baker: You would not consider it important to make any requirement of that kind?

Mr. Baker: I think not. If we are both selling apples, I cannot afford to sell specked ones if you have good ones.

Hon. Tom L. Johnson then addressed the committee on the subject of street railroad franchises.

Mayor Johnson: Mr. Chairman and Gentlemen of the Committee: I intend to speak on the subject of the street railroad franchise provisions of the code, and whatever else I say will be as a mere reference, comparison, as to the importance of the various measures.

You are going to pass a code bill. I hope you every success in making one that will last and one that will be satisfactory. I believe that the greatest monument that this legislature could leave after it, would be to propose and pass a bill that would receive the support of every man in both houses. I think that every good citizen in and out of the legislature has that feeling of confidence and good wishes for the work you have undertaken. I do not think any party lines should be drawn or party questions should be inserted into it. Some people claim that there have been suggestions by lawyers and even men on the bench that you can not go as far in Home Rule as you would like to, but I believe the

Home Rule proposition of giving to each locality the decision of all purely local questions is one that is almost universally commended.

The objections that I have heard come from people who say we can not do it, we have not the power. I am not sufficiently versed in law to answer that, I don't think that is a part of my office, but if we can approach the question of Home Rule, that would come nearer satisfying all branches. It would give to Cincinnati the kind of government Cincinnati wanted, it would give the same to Cleveland, and Columbus and Toledo, each selecting for itself. It would give us the opportunity to compare different forms of government as to the results they produce. It would be just like in mechanics. It is not wise that all improvements of printing presses should be made simultaneously and to hold back until some scheme is carried on to make them all at once. Our improvements in printing presses have come one at a time, one improvement added to another, the work of some man's mind carrying it a little further in some directions than others, till the result is a great invention. That is true in mechanics, it is true in everything. It is true in municipal law. If you will give that degree of Home Rule, you will give an opportunity that will in the end bring about the best form of municipal government. And, gentlemen, that is the biggest problem that this country has to-day to face. Our municipal communities are growing; our rural communities are decreasing. We are going to be a United Cities of America instead of a United States, and it is in the cities and in the government of the cities that we find the dark spots of our civilization, and it is from there will come the vandals and the huns that will destroy our civilization, if it is ever destroyed.

So that you representatives of Ohio in its legislature are engaged in no mere partisan work. You are engaged in the biggest work that any men have yet undertaken, you are forming a constitution and a scheme of government for more people than was given by our original constitution of the United States. Think of that! It is a great question, and I say that I am here to wish you God-speed and to say that if I can help you in that work I only want to help you.

You may make a mistake in your code. You may have a board system which time will condemn. You may have elective officers where appointive officers would be better. You may avoid the federal plan that seems to be the proper plan now with all thinkers on that subject—undivided responsibility. Those mistakes you may make. I believe personally the federal plan is best, but any plan that you make should

have a fair trial. Those errors, if made in that direction, will be cured. For my personal part I would like to see you make a good civil service provision, one that will hold what we have and improve it in the two departments we have it now in most of the cities, and extend it to the waterworks and generally to the engineering department and every department of the city, so that in a change of government in a city there will be only the changes of the heads of the departments who control policy, so that the man at the helm can have the power if he is charged with the responsibility of conducting the affairs of the people, leaving all mere clerical positions, mere positions where party influences ought not to go, where policy is not controlled, under a strict civil service by which all politics is removed in the appointment and discharge of employes, where there will be no incentive to turn one man out, because you can not put a man in his place,—in other words a sensible, fair civil service. That ought to be, in my judgment. You may leave it out; this can be cured as time goes on; but the error will be seen and subsequent legislators will make those changes.

But, gentlemen, on the subject of these street railroad franchises especially you may make a blunder which you cannot cure. You may make a mistake that it will be difficult, even impossible, to correct, and it is on that question I want to speak this morning and it is for that reason that I come before you.

I believe most of you will agree that I have had some experience on that subject and can speak with an experience back of me that is worth something. I have for twenty odd years been interested in street railroads in Ohio. I don't think I ever got any grant in my life. I have had one or two grants extended as to the length of track and I believe one grant that had run four or five years was made into a twenty-five year grant instead of fifteen. I have studied carefully that subject. It has been my aim to look over every proposition made to this legislature, the Nash code, the Guerin code, the proposition pending in the Senate, and it is with reference to these different propositions that I want to call your attention. I will leave for the final consideration the last question, "Our Present Law."

First, there has been a suggestion made by some that it would be well to have perpetual franchises or indeterminate franchises, and on that subject they have referred to the question that the gas company franchises all over the state of Ohio are perpetual franchises.

That is not true. There is not a lawyer here who will claim or can point to a decision that this is true, and if it be true, it would be absolutely useless in practice. The law of Ohio is that gas franchises and similar franchises of that kind shall be limited to ten years. That is a mere permission to put the pipes in the street and fix for a period not exceeding ten years the price to be charged; and that has been the almost universal rule. If there is an exception to that rule, I don't know it. Franchises are granted permission to put pipes in the streets and the price, the rate to be charged for this service is fixed for a period of ten years; and the statute expressly provides that at the end of that time, not by a common consent, not by the consent of the council and the company but by the mere act of the council, the new price is fixed for an additional term, and if no price is fixed, no right to charge anything remains. It is very different from the proposition suggested here that at the end of ten years they will agree. If they don't agree the old prices continue. Then there is this difference: Any number of pipes can be laid in a street. I have seen ten companies in New York occupying a single street, each with their own pipes. In the digging up there some of you have noticed a great number of pipes, and I have had it looked up and I understand there are as many as ten companies occupying one street. No matter, those pipes can be laid without inconvenience to the public, except for the mere tearing up, without limit. Put ten sets of pipes in the street and if you have not room enough to put them in the width you can go deeper. There is no limit. There is no reason why you could not put 100 pipes in a street. But when once you put two tracks in a street, or at most four, you have reached the limit of that street, you can not put in more. There is a limit to that, and in addition to that you can only put street railroads in some streets. You would not want every street in your city with a street railroad on it, yet you may have every street in your city with ten sets of pipes in it and they may be 100 feet deep if necessary, and when their right has expired by which they can charge a given rate their pipes are useless as dirt or clay in the streets.

In the first place, I claim these gas franchises are ten year and not perpetual grants. The mere fact that no time is named is construed by some to mean in perpetuity, but read on carefully and find if you will a decision that they have indefinitely the right to collect a toll, which is the real privilege they enjoy. So that the perpetual franchise when compared with the gas franchise of ten years it seems to me falls to the ground, because there is in one case no limit to the number of

pipes and in the other there is a decided limit both as to the streets and the number of tracks. This is a practical question that I think everyone will agree on.

Now, the other proposition suggested here for amendment, the Nash code suggestion. They have there a proposition which I understand you are going to strike out. I hope you will. It is more vicious than the present law, and I am going to show you before I get through, in addition to what Mr. Baker has said, how vicious the present law is. But the amendment in the Nash code provided in the first place for greater ease for old companies to extend their tracks into new territory. That is to say, under the present law if an extension is desired in a certain neighborhood without increase of fare, the company may make it, provided that before the ordinance is passed they present a majority of the feet front of the property owners consenting to the building of the line. In this amendment it is provided that in a case of extension the consents must be presented before the work is done. Do you see? They are not hampered then by the consents of property owners being required before the passage of such grant, but that the grant passes to-day and the work may be done five or ten years from to-day, whenever they can get the consent of the property owners. I do not think anybody has called your attention to that, and yet that is the provision to make it easier for old companies to get additional rights. Ninety per cent. of all the street railroads in the city of Cleveland and in Cincinnati have been built under that provision and have not been built under the original grant provision, which required competition as to the rate of fare. Competition was required in the first place, but only one person wanted to build a railroad. When the first railroad was built in Cleveland a mile and a half long, there were only one or two people to build it. They bid for it -- one bid. It was accepted. There might have been one or two others. They built different railroads in different parts of the city, nobody wanting two systems at the same time. And from those little beginnings everyone of those roads have been extended, until to-day we have 200 miles of street railroads in Cleveland, and I don't believe 20 miles, much less than 20, was ever bid for. They make it easy to get these extensions and they make it harder for any competing line to build.

Propose a three cent railroad and in the Nash code you find greater difficulties thrown in the way. Low fare propositions are almost entirely prevented by the provisions of that code. It has been so difficult

under the present law that there has not been a competing line succeed in 20 years against an old company. There are so many opportunities to defeat the aim of the new company that it is easy to block it. I think 20 years ago in Toledo at the end of a long fight a competing company was successful in getting some sort of a hold, and finally before it was wound up they consolidated, but there has not been with that exception an outside grant in this state in 20 years that has been successful under the present law, and the Nash code makes it still more difficult. Mr. Baker has pointed that out. They have put ingenious provisions in that so lap over each other that they multiply the chances for discussion and dispute, with three bodies of law, each referring to the other, that I venture to say — the man who wrote it knew what he was about — that it ought to be entitled a provision to prevent the building of any competing lines in opposition to any of the old companies in any of the cities of the state of Ohio. That is not the wish of this legislature, but those provisions are in the Nash code, so-called.

Now, just a moment generally on the subject of franchises. There seems to be in the air a feeling that but for long time grants to offer great security to investors there would not be any street railroads built. That is a fallacy, that is not true, that is not borne out by the facts. The best railroads in the United States occupy streets to-day where their grants can be determined in a minute, where their grants can be determined in some cases by a stroke of the pen, and in other cases by a mere act of the body giving them the power, they having reserved in the grants the right to alter, amend or repeal. The grants are made ostensibly for 25 years, but that reservation is made in the grants, and yet there is no trouble about selling a four per cent. bond at a premium running 50 years on that property. The Brooklyn bridge is the finest street railroad property in the world. There is not a street railroad in any city on earth that carries the number of passengers that ride on the street cars over Brooklyn bridge, yet that franchise can be terminated by the superintendent of the bridge in one minute without process and the rails and everything taken off the street. Was there any hesitation on the part of the people when they proposed to build across the bridge to invest \$300,000 in capital under not ten minutes long? Not at all. The reason was this: If it is good it will live, if it is not good it ought to die. If street railroads are useful they can live because of their usefulness, and the railroads that have short franchises pay most attention to the public service and guard best their interests and prevent competi-

tion and prevent trouble by simply keeping up to a high standard, and when low fares are demanded, if they are in reason, they meet those conditions.

Only a few years ago every street railroad in the state of Massachusetts was limited by a franchise that might be determined after ninety days' notice, and yet forty-year bonds sold at a premium. I could give you any number of such illustrations, and it is not true when men say to you that capital will feel insecure. Capital feels most insecure when they are trying to hold on to some antiquated scheme, when they are trying to perpetuate horse cars when electric cars ought to run when they are trying to run at a five cent rate of fare, where there is more profit to-day in a three cent fare than there was five years ago in a five cent fare. Improvements have gone on so rapidly that these propositions are true, and the best franchise, I think, is that franchise that is shortest and puts the burden on the management that they must live because they ought to live and because of their usefulness. I think that is a truism. You will not get many street railroad men to admit it, but the facts will bear me out.

Now, coming to our present laws as they are on the books to-day, it is almost impossible to build a competing line. With a friendly administration in Cleveland and with everything to our advantage, we soon landed in the courts and went back and did it again, and still we are doing it, and to-day the situation is that while every city government in the state of Ohio is really declared unconstitutional, every one of them is free to make a grant for 25 years at five cent fare, except the city of Cleveland, and they are enjoined from making a grant of ten years, or two years, or two minutes at a three cent fare. That is the situation.

I have no doubt you will find a remedy before you get through, but the present law makes it almost impossible to do this, but it makes it very easy for old companies to extend all over the city. But the worst thing in the present law is this: There are pages regulating the building of new grants that are worth very little in the first and that are most useful to the people in that they might bring about competition and operate to reduce fares; there are pages of restrictions; consents must be gotten first; advertisement must be made; bids must be taken and you must follow a particular form. You look through one part on the statutes till you become bewildered, and if you follow one line you run the risk of having the courts take the other. But the question of renewing franchises, the question of making over, giving new life to these expir-

ing franchises — those in Cleveland that are about to expire, those in Cincinnati that have expired under this law that has been declared unconstitutional and may be declared unconstitutional by the higher court — that provision can be found in a line.

At the end of section 2501 there are just a few words: Provided that at the expiration of the franchises they may be extended for not more than twenty-five years upon such terms as to the council seem just and equitable. There is not another line anywhere after that. There is not a condition necessary of property owners' consent; there is no competition provided for; there is no doubt thrown on the validity of that extension, it is simple and plain. They may, if the council care, extend for 25 years, and they have been doing it. In Cincinnati they extended 50 years. Where the interests of the owners of these valuable franchises were at stake they have by various means succeeded in keeping the open door for the extension of their life, for the renewal of their grant. The courts have even decided that those words "renewed at the expiration" does not mean at the date of expiration, but if it is a few years before it makes no difference. The Supreme Court says that. They take not the last year to extend, they are not confined to the proposition that on a day or a year they may extend, but they can do it eight years before, or seven or six. They can pick the time when a favorable council is elected and if they fail the first time they may try again. And they have merely to succeed in winning one council and they have won their fight. There is not a single safeguard in it.

You would not let a city make a debt of a few hundred thousand dollars or a big city a debt of a million or a few million dollars without referring it to the people, and yet in these few words if you let it stand as the law is today — and now it is more dangerous than ever, because not only Cleveland's franchises are expiring but Cincinnati's are being declared unconstitutional, and you have in the two cities of Cincinnati and Cleveland expiring franchises that are worth and could be sold in the market for more money than the combined city debts of those cities, — you let the council renew those franchises without giving the people the right to ratify them. The franchises in those two cities are worth more than all the debts of Cincinnati and Cleveland combined and you could sell them for that price in addition to requiring the purchaser to pay to the owners full and complete compensation for all their property, full price for all that, for all land and buildings and rails and tracks and

pavements and everything — in addition to that you could sell them today for enough money on a 25-year franchise to pay the debts of those cities.

Do you think you ought to leave that so that at the mere whim of any council elected at any one of ten years that they may try? Isn't it wise, isn't it in the interest of good government, isn't it in the interest of fair play that you should at least require — and that is the practical suggestion I make to you — that you should at least require that no ordinance renewing a franchise shall be valid until it has received a majority vote of the people of the community? That is fair, that is safe. The people won't ratify a grant that they are not in favor of. The council can not sell out the people, you can not in any way defeat their wishes. It will remove the incentive for men to be elected to these positions for the very purpose of being in the game when these big franchises are being granted. I say that is safe, that is wise, that is a fair proposition, and with that you can leave it that if they want to make the men under those circumstances pay a five-cent fare or a three-cent fare that they may do it only when the people ratify it. You require a two-thirds vote to put a bonded debt on a city or village and I am only suggesting that you make it a majority vote. That will be perfectly safe. They will never have money enough or interest enough to corrupt the community or a majority of them, but by concentration on a mere city council and on a bare majority of that body damage may be done.

You may as a result of this so arrange that the principal cities will all jump in and renew their franchises, renew their grants in that same line without any protection and you will give away from 50 to 70 millions of the people's money, whether it is represented in low fares or represented in an absolute sale, and I don't think any one of you individually would do that.

Ask these railroad men if that is not true. Investigate it for yourselves, and if you are leaving that door open, if you are leaving it open so that 70 or 80 million dollars may be taken from the people for all time to come in low fares, if that is true and that is the provision of the code, then it is your duty, as I believe it will be your pleasure to try and insert in that code some proposition that will safeguard that very point. Don't let men ask for perpetual franchises and then say we will not take that but strike it all out and leave it just as it is.

Don't let them come in now to cure grants that are made — they say fairly made — in Cincinnati. I hear from some people who live there that they were not fairly made, but the people were humbugged and

defrauded in those original grants, that they never were granted but that they were taken by men at their own risk, as a man takes a stolen watch. You ought to be very careful how you cure those grants and not perpetuate a grant in Cincinnati that they tell me was procured in fraud, and I, for one citizen, believe it. This curative proposition has another sting in it that I want to call your attention to because I understand that it will be before this house and senate for consideration. It is the so-called curative provision. Read it carefully and you will find that it has gone very much further than ever before. It provides not only that the grants shall be made good that are invalid, but that they might be extended before or after the expiration for not exceeding 25 years from the date of the expiration.

That means this: That they have taken out the words "renewed at their expiration" which the courts have given some latitude to. There is no authority to renew them after their expiration. Under the statute as it stands now it must be done before. This gives them the right to have it before or after. It leaves the use of the streets and the tracks to companies during any interregnum that may exist so that it will allow it to go on without any risk or interruption. You are curing that. You will provide a sort of indefinite extension beyond the time until it is renewed. These words can not mean anything else.

But in addition to that it amounts to this: that with a 20-year grant thus made for 20 years—an unexpired grant—under the curative proposition that comes from Cincinnati and has been introduced in the senate and now in the Guerin code, they may ask a renewal for 25 years from the date of its expiration, and that would amount to a 45 year grant—20 years and 25 years. That is one of the propositions. If you want to do your duty well, watch and weigh carefully every word that is put into the franchise provision. You have the best lawyers, the brightest minds, the greatest politicians to deal with. They are studying up every trick to so arrange this code if they can not get franchises in perpetuity that they will get them for 45 years, 25 years more, or that they will fix up this present law so that no matter what you do you can only extend them to the men who now own the grants.

That is what the present law provides for and what the Guerin code provides for—the so-called Cincinnati curative proposition. It does not say you may grant them to anybody on such terms, but it is made to mean you can grant them to the present owners and no-one else. It means you may only grant them to them on such terms as they will accept.

There is a way out of the difficulty. In addition to the proposition that no ordinance should be good until approved by the people — that will stop it, that will cure it — there is one step further you ought to go, and that is to provide that when a grant is renewed at its expiration it shall be renewed only to the individuals or company that will agree to carry passengers at the lowest rates of fare and have competition on the subject, which is the best way to find out how low the fare can be made. It will be the best way to determine who will carry at the lowest rates of fare, not by the mere whim of the council or somebody's proposition or the argument of some railroad attorney or some lobbyist who will say they can not do better than five cents because it costs them now about three and a half cents to carry passengers. Put the question up to competition. Let men who will put up a big bond in money or security that they will agree to carry out the terms of the contract — require as large a bond as you like — propose to take those roads and operate them at the lowest rates of fare and only allow the council to make the grant to such a person or corporation.

But you will say, what about the old street railroad, are you going to treat them that way? My answer is no. I would treat the old street railroad very much more fairly than the owners of street railroads today treat their tenants when a 25-year lease expires. To any railroad president or stockholder who comes and says, "Would you take our property, would you destroy our property at the end of 25 years?" I say no. Those men if you have a lease of 25 years of ground and you put a structure on it, at the end of the 25 years will take your structure and it is their property without any compensation. I think that is immoral, I think that is wrong. I think it would be wrong for a city to let street railroad companies invest their money in a street railroad — though they say nothing about what they are going to do at the end of the time when the 25 years is up — I say the community ought to safe-guard the interests of those people in providing that if any one else than the present owner or the then owner should be the lowest bidder, that lowest bidder shall be required to pay full value for all the property they have as a going concern, less reasonable depreciation and plus 15 or 20 per cent. for good will. Pay them well for it, let them be paid more than the price of their property, and on that provision of articles accept bids. If the old company is the lowest bidder, no harm is done. If any other company is the lowest bidder then they are absolutely secure in that the full and fair value of their cars and tracks and pavement and power house

and everything will be paid, if they want to take it. They will want to take it; there will be no trouble about that.

Mr. Thomas: How would you arrive at the valuation of the old company's property?

Mr. Johnson: You would not have the power to require them to sell. If you had, you might require a system of arbitration of some kind or let the courts determine it; but you should require the lowest bidders—you would invite bids on that plan—to give an ample bond to make good their proposition—you ought to make them deposit it in money—that they will pay to the old company the price that they can agree upon for the value of this property, the value of the property less depreciation and plus 20 per cent. In case they fail to agree within a given time, then such price as the council shall fix as the value of their property. They will never let it go to the council, they will agree.

Now, that is the way we do it in Cleveland today. We have what we call free territory. The city council reserves the right to let any other company use the tracks on certain streets upon such terms as the council shall fix unless the parties agree. The parties always agree. I suggest that as a way. At any rate, I would be fairer with the street railroad companies than the men who rent property to-day are to their tenants. I would give them the security that they know when they come to the end of their grant they are not going to be thrown out and have to sell their property as junk. They would be warranted and encouraged to keep their property up to the highest standard, because they would want it appraised high.

Mr. Thomas: What would you do with the bonds given by the company?

Mr. Johnson: I don't think we would have anything to do with them but I will answer your question this way: There are no street railroads that I know of—there may be some I don't know of—in which the physical property under the rule I have proposed would not bring a great deal more than the bonds. Bondholders don't invest except on a plank that the physical property fairly appraised will cover the bonds. The stockholders would have the first chance in bidding for the future. I think in every case the old company would be the successful bidder. I think the old company would not take the chance. They might bid for three cent fare and somebody else might bid for three cent fare, and as between the old company and the new at the same rate the old company ought to have the preference, and that will cure it. But this is a means

by which, dealing fairly with them, you can at the same time deal fairly with the public and secure a low rate.

If, instead of this legislature leaving a great code as a monument to the men who make it, the result of your work is to facilitate the giving away of 50,70 or 100 millions of the property of the people of this state, you will find that the monument you will leave will be an unenviable one, and I don't believe there is a man within the sound of my voice if he believes the proposition that that risk exists would cast his vote to leave that door open.

Mr. Thomas: By what method would you submit to the people the question as to whether a franchise should be granted originally or renewed?

Mr. Johnson: My method would be to require the council shall advertise for bids, naming the conditions, one of the conditions being that the successful bidders shall pay the owners if they cannot agree, such price as the council shall fix as just and equitable for their property. Then when the day arrives you open the bids. I would not require any ticket bidding. I would let the fare be the cash fare for one person, so that they would have to pay five, four or three cents. You may require that there shall be universal transfers given. When the bids are opened you will find some five, some four and some three cent bids. I think you will find mostly three cents bids. It goes to the council and the council should determine. If you want to make it additionally safe I would say the council should only give it to another person if the bid is lower than the bid of the old company, so that company would be entitled to the first choice.

Mr. Thomas: You have said this question you would not leave to the council?

Mr. Johnson: I would leave it all to the council, but I would subject the ordinance they pass to the approval of the people.

Mr. Thomas: Let the council fix it in the first place and then submit it to the people before it goes into effect?

Mr. Johnson: That is it—require ratification.

Mr. Silberberg: Are there any other roads that you know of besides the one in Washington city that have not a franchise for any period whose bonds are selling at four per cent. or thereabout?

Mr. Johnson: I don't remember any recent quotations, but I know the bonds of the old Boston road sell at a premium. The Brooklyn bonds are not selling at a premium, but they are selling very much up to par.

Mr. Silberberg: You say the Washington city street railway bonds are selling at four per cent?

Mr. Johnson: I don't know of that. They are selling very well up. The old Pennsylvania lines, I suppose, sell at a great deal of a premium.

Mr. Bracken: Is it generally admitted that franchises are always secured through corruption?

Mr. Johnson: It is generally charged. I don't believe it is admitted.

Mr. Bracken: Wouldn't there be more efficiency and less corruption if we had public ownership?

Mr. Johnson: Of course, I am in favor of the community owning the street railroads, Mr. Bracken, and I appeared before a committee once and discussed that. We both favored that, but from different reasoning we came to the same conclusions.

I want to say to you, Mr. Silberberg, that you can look close home in this proposition of whether securities will sell on grants that can be determined at will. Every grant of privilege, every charter, every right in the state of Ohio is subject at the will of this legislature to repeal, alteration or amendment. The constitution of the state of Ohio is absolute and complete. Just read it, that section is not often referred to. You will find that no charter, no grant can last longer than the will of this legislative body, but, of course, it is pretty difficult to have general laws made that will repeal them. Our bonds do sell in this state of all our steam railroads and everything else at a very high rate, and yet they are all subject to that provision.

Mr. Silberberg: I thought when a franchise was granted for a certain period that came within a constitutional clause that it could not be revised by the legislature?

Mr. Johnson: I am not a lawyer, ask the others. Lawyers tell me that if the constitution means anything it means all grants, all privileges, all immunities shall be subject to alteration or amendment or repeal at any time. If these are not grants, immunities or privileges, they are not subject to that, but I have always presumed they were.

Mr. Price: A contract entered into under a law passed by the legislature becomes inviolable under a provision of the United States constitution.

Mr. Johnson: Suppose you have the right to grant a street railroad franchise from the State capital and pass a law saying all street railroad franchises shall expire in 50 years from to-day. The next legislature

repeals that proposition. Will the grant run 50 years or will it be repealed?

Mr. Price: If the law is constitutional and the grant is accepted before the repeal of the law the grant will stand for 50 years.

Mr. Johnson: You may be right. I would not like to take a chance on the other side of that proposition. But it occurs to me if the legislature were to enact a law that all street railroad franchises in the state of Ohio should expire in 1950 that would be a good law, that would fix the date of the expiration of those franchises. If the next legislature repealed it and made them expire at 20 years, it would curtail the life of those franchises. I am assuming no contract intervening. You take it away by that act. The question comes up that one legislature can not bind another as to the life of a franchise. I doubt very much, though Mr. Price may be right, I doubt very much if this legislature can not make a grant for 50 years that a subsequent legislature cannot revoke. I doubt very much that they can empower any other body to make a grant that a subsequent legislature could not revoke. In other words, I doubt very much whether you can delegate to a city council a power which you do not have.

Mr. Price: If this legislature passed a law in which we could embody provisions that it might be subject to change by any subsequent legislature that would not be any 50-year franchise. But if you set a definite time for which the franchise can run and it is accepted and the grantee goes ahead and spends money, that is a part of the contract; but if you don't set any time, or, in other words, if the time is in your control, then it is not a 50-year franchise, but it is one for the present.

Mr. Johnson: You may be right and the courts may uphold that; but if a grant is made in the way you speak of for 50 years, if you allow them to make a grant for 50 years, it does not seem to me that the fact that you put in your grant that it may be for not more than 50 years or it may be such time as the legislature may hereafter determine, makes it any stronger or better than your constitution. You propose that if the law provides it may be determined any time, it may, but if the constitution provides it may be determined any time is not that quite as good as the statute?

Mr. Price: The legislature can not override the constitution.

Mr. Johnson: And the constitution says that all grants, immunities and privileges shall be subject to amendment, alteration and repeal at any time. It seems to me that is bigger than any statute or anything you can put into the statute law.

Mr. Price: I think you can regulate and control under that provision, but when it comes down to a contractual part you run against the constitution of the United States.

Mr. Johnson: That is the danger of my proposition, and I would like to have to go before a court and argue that.

On motion the committee adjourned to meet at 2 o'clock, P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

TOM L. JOHNSON.

SEPTEMBER 10, 9:30 A. M.

Mayor Johnson: Mr. Chairman and Gentlmen of the Committee: I intend to speak on the subject of the street railroad franchise provisions of the code, and whatever else I say will be as a mere reference, comparison, as to the importance of the various measures.

You are going to pass a code bill. I hope you every success in making one that wil last and one that will be satisfactory. I believe that the greatest monument that this legislature could leave after it, would be to propose and pass a bill that would receive the support of every man in both houses. I think that every good citizen in and out of the legislature has that feeling of confidence and good wishes for the work you have undertaken. I do not think any party lines should be drawn or party questions should be inserted into it. Some people claim that there have been suggestions by lawyers and even men on the bench that you can not go as far in Home Rule as you would like to, but I believe the Home Rule proposition of giving to each locality the decision of all purely local questions is one that is almost universally commended.

The objections that I have heard come from people who say we can not do it, we have not the power. I am not sufficiently versed in law to answer that, I don't think that is a part of my office, but if we can approach the question of Home Rule, that would come nearer satisfying all branches. It would give to Cincinnati the kind of Government Cincinnati wanted, it would give the same to Cleveland, and Columbus and Toledo, each selecting for itself. It would give us the opportunity to compare different forms of government as to the results they produce. It would be just like in mechanics. It is not wise that all improvements of printing presses should be made simultaneously and to hold back until some scheme is carried on to make them all at once. Our improvements in printing presses have come one at a time, one improvemnt added to another, the work of some man's mand carrying it a little further in some

directions than others, till the result is a great invention. That is true in mechanics, it is true in everything. It is true in municipal law. If you will give that degree of Home Rule, you will give an opportunity that will in the end bring about the best form of municipal government. And, gentlemen, that is the biggest problem that this country has to-day to face. Our municipal communities are growing; our rural communities are decreasing. We are going to be a United Cities of America instead of a United States, and it is in the cities and in the government of the cities that we find the dark spots of our civilization, and it is from there will come the vandals and the huns that will destroy our civilization, if it is ever destroyed.

So that you representatives of Ohio in its legislature are engaged in no mere partisan work. You are engaged in the biggest work that any men have yet undertaken, you are forming a constitution and a scheme of government for more people than was given by our original constitution of the United States. Think of that! It is a great question, and I say that I am here to wish you God-speed and to say that if I am help you in that work I only want to help you.

You may make a mistake in your code. You may have a board system which time will condemn. You may have elective officers where appointive officers would be better. You may avoid the federal plan that seems to be the proper plan now with all thinkers on that subject—undivided responsibility. Those mistakes you may make. I believe personally the federal plan is best, but any plan that you make should have a fair trial. Those errors, if made in that direction, will be cured. For my personal part I would like to see you make a good civil service provision, one that will hold what we have and improve it in the two departments we have it now in most of the cities, and extend it to the waterworks and generally to the engineering department and every department of the city, so that in a change of government in a city there will be only the changes of the heads of the departments who control policy, so that the man at the helm can have the power if he is charged with the responsibility of conducting the affairs of the people, leaving all mere clerical positions, mere positions where party influences ought not to go, where policy is not controlled under a strict civil service by which all politics is removed in the appointment and discharge of employes, where there will be no incentive to turn one man out, because you can not put a man in his place,—in other words a sensible, fair civil service. That ought to be, in my judgment. You may leave it out; this can be cured

as time goes on; but the error will be seen and subsequent legislators will make those changes.

But, gentlemen, on the subject of these street railroad franchises especially you may make a blunder which you cannot cure. You may make a mistake that it will be difficult, even impossible, to correct, and it is on that question I want to speak this morning and it is for that reason that I come before you.

I believe most of you will agree that I have had some experience on that subject and can speak with an experience back of me that is worth something. I have for twenty odd years been interested in street railroads in Ohio. I don't think I ever got any grant in my life. I have had one or two grants extended as to the length of track and I believe one grant that had run four or five years was made into a twenty-five year grant instead of fifteen. I have studied carefully that subject. It has been my aim to look over every proposition made to this legislature, the Nash code, the Guerin code, the proposition pending in the Senate, and it is with reference to these different propositions that I want to call your attention. I will leave for the final consideration the last question, "Our Present Law."

First, there has been a suggestion made by some that it would be well to have perpetual franchises or indeterminate franchises, and on that subject they have referred to the question that the gas company franchises all over the state of Ohio are perpetual franchises.

That is not true. There is not a lawyer here who will claim or can point to a decision that this is true, and if it be true, it would be absolutely useless in practice. The law of Ohio is that gas franchises and similar franchises of that kind shall be limited to ten years. That is a mere permission to put the pipes in the street and fix for a period not exceeding ten years the price to be charged; and that has been the almost universal rule. If there is an exception to that rule, I don't know it. Franchises are granted permission to put pipes in the streets and the price, the rate to be charged for this service is fixed for a period of ten years; and the statute expressly provides that at the end of that time, not by a common consent, not by consent of the council and the company but by the mere act of the council, the new price is fixed for an additional term, and if no price is fixed, no right to charge anything remains. It is very different from the proposition suggested here that at the end of ten years they will agree. If they don't agree the old prices continue. Then there is this difference: Any number of pipes can be laid in a

street. I have seen ten companies in New York occupying a single street, each with their own pipes. In the digging up there some of you have noticed a great number of pipes, and I have had it looked up and I understand there as many as ten companies occupying one street. No matter, those pipes can be laid without inconvenience to the public, except for the mere tearing up, without limit. Put ten sets of pipes in the street and if you have not room enough to put them in the width you can go deeper. There is no limit. There is no reason why you could not put 100 pipes in a street. But when once you put two tracks in a street, or at most four, you have reached the limit of that street, you can not put in more. There is a limit to that, and in addition to that you can only put street railroads in some streets. You would not want every street in your city with a street railroad on it, yet you may have every street in your city with ten sets of pipes in it and they may be 100 feet deep if necessary, and when their right has expired by which they can change a given rate their pipes are useless as dirt or clay in the streets.

In the first place, I claim these gas franchises are ten year and not perpetual grants. The mere fact that no time is named is construed by some to mean in perpetuity, but read on carefully and find if you will, a decision that they have indefinitely the right to collect a toll, which is the real privilege they enjoy. So that the perpetual franchise when compared with the gas franchise of ten years it seems to me falls to the ground, because there is in one case no limit to the number of pipes and in the other there is a decided limit both as to the streets and the number of tracks. This is a practical question that I think every one will agree on.

Now, the other proposition suggested here for amendment, the Nash code suggestion. They have there a proposition which I understand you are going to strike out. I hope you will. It is more vicious than the present law, and I am going to show you before I get through, in addition to what Mr. Baker has said, how vicious the present law is. But the amendment in the Nash code provided in the first place for greater ease for old companies to extend their tracks into new territory. That is to say, under the present law if an extension is desired in a certain neighborhood without increase of fare, the company may make it, provided that before the ordinance is passed they present a majority of the feet front of the property owners consenting to the building of the line. In this amendment it is provided that in a case of extension the consents must be presented before the work is done. Do you see?

They are not hampered then by the consents of property owners being required before the passage of such grant, but that the grant passes to-day and the work may be done five or ten years from to-day, whenever they can get the consent of the property owners. I do not think anybody has called your attention to that, and yet that is the provision to make it easier for old companies to get additional rights. Ninety per cent. of all the street railroads in the city of Cleveland and in Cincinnati have been built under that provision and have not been built under the original grant provision, which required competition as to the rate of fare. Competition was required in the first place, but only one person wanted to build a railroad. When the first railroad was built in Cleveland a mile and a half long, there were only one or two people to build it. They bid for it—one bid. It was accepted. There might have been one or two others. They built different railroads in different parts of the city, nobody wanting two systems at the same time. And from those little beginnings everyone of those roads have been extended, until to-day we have 200 miles of street railroads in Cleveland, and I don't believe 20 miles, much less than 20, was ever bid for. They make it easy to get these extensions and they make it harder for any competing line to build.

Propose a three cent railroad and in the Nash code you find greater difficulties thrown in the way. Low fare propositions are almost entirely prevented by the provisions of that code. It has been so difficult under the present law that there has not been a competing line succeed in 20 years against an old company. There are so many opportunities to defeat the aim of the new company that it is easy to block it. I think 20 years ago in Toledo at the end of a long fight a competing company was successful in getting some sort of a hold, and finally before it was wound up they consolidated, but there has not been with that exception an outside grant in this state in 20 years that has been successful under the present law, and the Nash code makes it still more difficult. Mr. Baker has pointed that out. They have put ingenious provisions in that so lap over each other that they multiply the chances for discussion and dispute, with three bodies of law, each referring to the other, that I venture to say—the man who wrote it knew what he was about—that it ought to be entitled a provision to prevent the building of any competing lines in opposition to any of the old companies in any of the cities of the state of Ohio. That is not the wish of this legislature, but those provisions are in the Nash code, so-called.

Now, just a moment generally on the subject of franchises. There seems to be in the air a feeling that but for long time grants to offer great security to investors there would not be any street railroads built. That is a fallacy, that is not true, that is not borne out by the facts. The best railroads in the United States occupy streets to-day where their grants can be determined in a minute, where their grants can be determined in some cases by a stroke of the pen, and in other cases by a mere act of the body giving them the power, they having reserved in the grants the right to alter, amend or repeal. The grants are made ostensibly for 25 years, but that reservation is made in the grants, and yet there is no trouble about selling a four per cent. bond at a premium running 50 years on that property. The Brooklyn bridge is the finest street railroad property in the world. There is not a street railroad in any city on earth that carries the number of passengers that ride on the street cars over Brooklyn bridge, yet that franchise can be terminated by the superintendent of the bridge in one minute without process and the rails and everything taken off the street. Was there any hesitation on the part of the people when they proposed to build across the bridge to invest \$300,000 in capital under not ten minutes long? Not at all. The reason was this: If it is good it will live, if it is not good it ought to die. If street railroads are useful they can live because of their usefulness, and the railroads that have short franchises pay most attention to the public service and guard best their interests and prevent competition and prevent trouble by simply keeping up to a high standard, and when low fares are demanded, if they are in reason, they meet those conditions.

Only a few years ago every street railroad in the state of Massachusetts was limited by a franchise that might be determined after ninety days' notice, and yet forty-year bonds sold at a premium. I could give you any number of such illustrations, and it is not true when men say to you that capital will feel insecure. Capital feels most insecure when they are trying to hold on to some antiquated scheme, when they are trying to perpetuate horse cares when electric cars ought to run, when they are trying to run at a five cent rate of fare, when there is more profit to-day in a three cent fare than there was five years ago in a five cent fare. Improvements have gone on so rapidly that these propositions are true, and the best franchise. I think, is that franchise that is shortest and puts the burden on the management that they must live because they ought to live and because of their usefulness. I think that is a truism.

You will not get many street railroad men to admit it, but the facts will bear me out.

Now, coming to our present laws as they are on the books to-day, it is almost impossible to build a competing line. With a friendly administration in Cleveland and with everything to our advantage, we soon landed in the courts and went back and did it again, and still we are doing it, and to-day the situation is that while every city government in the state of Ohio is really declared unconstitutional, every one of them is free to make a grant for 25 years at five cent fare, except the city of Cleveland, and they are enjoined from making a grant of ten years, or two years, or two minutes at a three cent fare. That is the situation.

I have no doubt you will find a remedy before you get through, but the present law makes it almost impossible to do this, but it makes it very easy for old companies to extend all over the city. But the worst thing in the present law is this: There are pages regulating the building of new grants that are worth very little in the first and that are most useful to the people in that they might bring about competition and operate to reduce fares; there are pages of restrictions; consents must be gotten first; advertisement must be made; bids must be taken and you must follow a particular form. You look through one part on the statutes till you become bewildered, and if you follow one line you run the risk of having the courts take the other. But the question of renewing franchises, the question of making over, giving new life to these expiring franchises—those in Cleveland that are about to expire, those in Cincinnati that have expired under this law that has been declared unconstitutional and may be declared unconstitutional by the higher court—that provision can be found in a line.

At the end of section 2501 there are just a few words: Provided that at the expiration of the franchises they may be extended for not more than twenty-five years upon such terms as to the council seem just and equitable. There is not another line anywhere after that. There is not a condition necessary of property owners' consent; there is no competition provided for; there is no doubt thrown on the validity of that extension, it is simple and plain. They may, if the council care, extend for 25 years, and they have been doing it. In Cincinnati they extended 10 years. Where the interests of the owners of these valuable franchises were at stake they have by various means succeeded in keeping the open door for the extension of their life, for the renewal of their grant. The courts have even decided that those words "renewed at the expiration"

does not mean at the date of expiration, but if it is a few years before it makes no difference. The Supreme Court says that. They take not the last year to extend, they are not confined to the proposition that on a day or a year they may extend, but they can do it eight years before, or seven or six. They can pick the time when a favorable council is elected and if they fail the first time they may try again. And they have merely to succeed in winning one council and they have won their fight. There is not a single safeguard in it.

You would not let a city make a debt of a few hundred thousand dollars or a big city a debt of a million or a few million dollars without referring it to the people, and yet in these few words if you let it stand as the law is to-day — and now it is more dangerous than ever, because not only Cleveland's franchises are expiring but Cincinnati's are being declared unconstitutional, and you have in the two cities of Cincinnati and Cleveland expiring franchises that are worth and could be sold in the market for more money than the combined city debts of those cities,—you let the council renew those franchises without giving the people the right to ratify them. The franchises in those two cities are worth more than all the debts of Cincinnati and Cleveland combined and you could sell them for that price in addition to requiring the purchaser to pay to the owners full and complete compensation for all their property, full price for all that, for all land and buildings and rails and tracks and pavements and everything — in addition to that you could sell them to-day for enough money on a 25-year franchise to pay the debts of those cities.

Do you think you ought to leave that so that at the mere whim of any council elected at any one of ten years that they may try? Isn't it wise, isn't it in the interest of good government, isn't it in the interest of fair play that you should at least require — and that is the practical suggestion I make to you — that you should at least require that no ordinance renewing a franchise shall be valid until it has received a majority vote of the people of the community? That is fair, that is safe. The people won't ratify a grant that they are not in favor of. The council can not sell out the people, you can not in any way defeat their wishes. It will remove the incentive for men to be elected to these positions for the very purpose of being in the game when these big franchises are being granted. I say that it is safe, that is wise, that is a fair proposition, and with that you can leave it that if they want to make the men under those circumstances pay a five-cent fare or a three-cent fare that they may do it only when the people ratify it. You require a

two-thirds vote to put a bonded debt on a city or village and I am only suggesting that you make it a majority vote. That will be perfectly safe. They will never have money enough or interest enough to corrupt the community or a majority of them, but by concentration on a mere city council and on a bare majority of that body damage may be done.

You may as a result of this so arrange that the principal cities will all jump in and renew their franchises, renew their grants in that same line without any protection and you will give away from 50 to 70 millions of the people's money, whether it is represented in low fares or represented in an absolute sale, and I don't think any one of you individually would do that.

Ask these railroad men if that is not true. Investigate it for yourselves, and if you are leaving that door open, if you are leaving it open so that 70 or 80 million dollars may be taken from the people for all time to come in low fares, if that is true and that is the provision of the code, then it is your duty, as I believe it will be your pleasure to try and insert in that code some proposition that will safeguard that very point. Don't let men ask for perpetual franchises and then say we will not take that but strike it all out and leave it just as it is.

Don't let them come in now to cure grants that are made — they say fairly made — in Cincinnati. I hear from some people who live there that they were not fairly made, but the people were humbugged and defrauded in those original grants, that they never were granted but that they were taken by men at their own risk, as a man takes a stolen watch. You ought to be very careful how you cure those grants and not perpetuate a grant in Cincinnati that they tell me was procured in fraud, and I, for one citizen, believe it. This curative proposition has another sting in it that I want to call your attention to because I understand that it will be before this house and senate for consideration. It is the so-called curative provision. Read it carefully and you will find that it has gone very much further than ever before. It provides not only that the grants shall be made good that are invalid, but that they might be extended before or after the expiration for not exceeding 25 years from the date of the expiration.

That means this: That they have taken out the words "renewed at their expiration" which the courts have given some latitude to. There is no authority to renew them after their expiration. Under the statute as it stands now it must be done before. This gives them the right to have it before or after. It leaves the use of the streets and the tracks

to companies during any interregnum that may exist so that it will allow it to go without any risk or interruption. You are curing that. You will provide a sort of indefinite extension beyond the time until it is renewed. These words can not mean anything else.

But in addition to that it amounts to this: that with a 20-year grant thus made for 20 years — an unexpired grant — under the curative proposition that comes from Cincinnati and has been introduced in the senate and now in the Guerin code, they may ask a renewal for 25 years from the date of its expiration, and that would amount to a 45 year grant — 20 years and 25 years. That is one of the propositions. If you want to do your duty well, watch and weigh carefully every word that is put into the franchise provision. You have the best lawyers, the brightest minds, the greatest politicians to deal with. They are studying up every trick to so arrange this code if they can not get franchises in perpetuity that they will get them for 45 years, 25 years more, or that they will fix up this present law so that no matter what you do you can only extend them to the men who now own the grants.

That is what the present law provides for and what the Guerin code provides for — the so-called Cincinnati curative proposition. It does not say you may grant them to anybody on such terms, but it is made to mean you can grant them to the present owners and no one else. It means you may only grant them to them on such terms as they will accept.

There is a way out of the difficulty. In addition to the proposition that no ordinance should be good until approved by the people — that will stop it, that will cure it — there is one step further you ought to go, and that is to provide that when a grant is renewed at its expiration it shall be renewed only to the individuals or company that will agree to carry passengers at the lowest rates of fare and have competition on the subject, which is the best way to find out how low the fare can be made. It will be the best way to determine who will carry at the lowest rates of fare, not by the mere whim of the council or somebody's proposition or the argument of some railroad attorney or some lobbyist who will say they can not do better than five cents because it costs them now about three and a half cents to carry passengers. Put the question up to competition. Let men who will put up a big bond in money or security that they will agree to carry out the terms of the contract — require as large a bond as you like — propose to take those roads and operate them at the lowest rates of fare and only allow the council to make the grant to such a person or corporation.

But you will say, what about the old street railroad, are you going to treat them that way? My answer is no. I would treat the old street railroad very much more fairly than the owners of street railroads to-day treat their tenants when a 25-year lease expires. To any railroad president or stockholder who comes and says, "Would you take our property, would you destroy our property at the end of 25-years?" I say no. Those men if you have a lease of 25 years of ground and you put a structure on it, at the end of the 25 years will take your structure and it is their property without any compensation. I think that is immoral, I think that is wrong. I think it would be wrong for a city to let street railroad companies invest their money in a street railroad — though they say nothing about what they are going to do at the end of the time when the 25 years is up — I say the community ought to safe-guard the interests of those people in providing that if any one else than the present owner or the then owner should be the lowest bidder, that lowest bidder shall be required to pay full value for all the property they have as a going concern, less reasonable depreciation and plus 15 or 20 per cent. for good will. Pay them well for it, let them be paid more than the price of their property, and on that provision of articles accept bids. If the old company is the lowest bidder, no harm is done. If any other company is the lowest bidder then they are absolutely secure in that the full and fair value of their cars and tracks and pavement and power house and everything will be paid, if they want to take it. They will want to take it; there will be no trouble about that.

Mr. Thomas: How would you arrive at the valuation of the old company's property?

Mr. Johnson: You would not have the power to require them to sell. If you had, you might require a system of arbitration of some kind or let the courts determine it; but you should require the lowest bidders — you would invite bids on that plan — to give an ample bond to make good their proposition — you ought to make them deposit it in money — that they will pay to the old company the price that they can agree upon for the value of this property, the value of the property less depreciation and plus 20 per cent. In case they fail to agree within a given time, then such price as the council shall fix as the value of their property. They will never let it go to the council, they will agree.

Now, that is the way we do it in Cleveland to-day. We have what we call free territory. The city council reserves the right to let any other company use the tracks on certain streets upon such terms as the council

shall fix unless the parties agree. The parties always agree. I suggest that as a way. At any rate, I would be fairer with the street railroad companies than the men who rent property to-day are to their tenants. I would give them the security that they know when they come to the end of their grant they are not going to be thrown out and have to sell their property as junk. They would be warranted and encouraged to keep their property up to the highest standard, because they would want it appraised high.

Mr. Thomas: What would you do with the bonds given by the company?

Mr. Johnson: I don't think we would have anything to do with them but I will answer your question this way: There are no street railroads that I know of and there may be some I don't know of—in which the physical property under the rule I have proposed would not bring a great deal more than the bonds. Bondholders don't invest except on a plank that the physical property fairly appraised will cover the bonds. The stockholders would have the first chance in bidding for the future. I think in every case the old company would be the successful bidder. I think the old company would not take the chance. They might bid for three cent fare and somebody else might bid for three cent fare, and as between the old company and the new at the same rate the old company ought to have the preference, and that will cure it. But this is a means by which, dealing fairly with them, you can at the same time deal fairly with the public and secure a low rate.

If, instead of this the legislature leaving a great code as a monument to the men who make it, the result of your work is to facilitate the giving away of 50, 70 or 100 millions of the property of the people of this state, you will find that the monument you will leave will be an unenviable one, and I don't believe there is a man within the sound of my voice if he believes the proposition that that risk exists would cast his vote to leave that door open.

Mr. Thomas: By what method would you submit to the people the question as to whether a franchise should be granted originally or renewed?

Mr. Johnson: My method would be to require the council shall advertise for bids, naming the conditions, one of the conditions being that the successful bidders shall pay the owners if they cannot agree, such price as the council shall fix as just and equitable for their property. Then when the day arrives you open the bids. I would not require

any ticket bidding. I would let the fare be the cash fare for one person, so that they would have to pay five, four or three cents. You may require that there shall be universal transfers given. When the bids are opened you will find some five, some four and some three cent bids. I think you will find mostly three cent bids. It goes to the council and the council should determine. If you want to make it additionally safe I would say the council should only give it to another person if the bid is lower than the bid of the old company, so that company would be entitled to the first choice.

Mr. Thomas: You have said this question you would not leave to the council?

Mr. Johnson: I would leave it all to the council, but I would subject the ordinance they pass to the approval of the people.

Mr. Thomas: Let the council fix it in the first place and then submit it to the people before it goes into effect?

Mr. Johnson: That is it — require ratification.

Mr. Silberberg: Are there any other roads that you know of besides the one in Washington city that have not a franchise for any period whose bonds are selling at four per cent. or thereabout?

Mr. Johnson: I don't remember any recent quotations, but I know the bonds of the old Boston road sell at a premium. The Brooklyn bonds are not selling at a premium, but they are selling very much up to par.

Mr. Silberberg: You say the Washington city street railway bonds are selling at four per cent.?

Mr. Johnson: I don't know of that. They are selling very well up. The old Pennsylvania lines, I suppose, sell at a great deal of a premium.

Mr. Bracken: Is it generally admitted that franchises are always secured through corruption?

Mr. Johnson: It is generally charged. I don't believe it is admitted.

Mr. Bracken: Wouldn't there be more efficiency and less corruption if we had public ownership?

Mr. Johnson: Of course, I am in favor of the community owning the street railroads, Mr. Bracken, and I appeared before a committee once and discussed that. We both favored that, but from different reasoning we came to the same conclusions.

I want to say to you, Mr. Silberberg, that you can look close home in this proposition of whether securities will sell on grants that can be determined at will. Every grant of privilege, every charter, every right

in the state of Ohio is subject at the will of this legislature to repeal, alteration or amendment. The constitution of the state of Ohio is absolute and complete. Just read it, that section is not often referred to. You will find that no charter, no grant can last longer than the will of this legislative body, but, of course, it is pretty difficult to have general laws made that will repeal them. Our bonds do sell in this state of all our steam railroads and everything else at a very high rate, and yet they are all subject to that provision.

Mr. Silberberg: I thought when a franchise was granted for a certain period that came within a constitutional clause that it could not be revised by the legislature?

Mr. Johnson: I am not a lawyer, ask the others. Lawyers tell me that if the constitution means anything it means all grants, all privileges, all immunities shall be subject to alteration or amendment or repeal at any time. If these are not grants, immunities or privileges, they are not subject to that, but I have always presumed they were.

Mr. Price: A contract entered into under a law passed by the legislature become inviolable under a provision of the United States constitution.

Mr. Johnson: Suppose you have the right to grant a street railroad franchise from the State capital and pass a law saying all street railroad franchises shall expire in 50 years from to-day. The next legislature repeals that proposition. Will the grant run 50 years or will it be repealed?

Mr. Price: If the law is constitutional and the grant is accepted before the repeal of the law the grant will stand for 50 years.

Mr. Johnson: You may be right. I would not like to take a chance on the other side of that proposition. But it occurs to me if the legislature were to enact a law that all street railroad franchises in the state of Ohio should expire in 1950 that would be a good law, that would fix the date of the expiration of those franchises. If the next legislature repealed it and made them expire at 20 years, it would curtail the life of those franchises. I am assuming no contract intervening. You take it away by that act. The question comes up that one legislature can not bind another as to the life of a franchise. I doubt very much, though Mr. Price may be right, I doubt very much if this legislature can not make a grant for 50 years that a subsequent legislature cannot revoke. I doubt very much that they can empower any other body to make a grant that a subsequent

legislature could not revoke. In other words, I doubt very much whether you can delegate to a city council a power which you do not have.

Mr. Price: If this legislature passed a law in which we could embody provisions that it might be subject to change by any subsequent legislature that would not be any 50-year franchise. But if you set a definite time for which the franchise can run and it accepted and the grantee goes ahead and spends money, that is a part of the contract; but if you don't set any time, or, in other words, if the time is in your control, then it is not a 50-year franchise, but it is one for the present.

Mr. Johnsn: You may be right and the courts may uphold that; but if a grant is made in the way you speak of for 50 years, if you allow them to make a grant for 50 years, it does not seem to me that the fact that you put in your grant that it may be for not more than fifty years or it may be such time as the legislature may hereafter determine, makes it any stronger or better than your constitution. You propose that if the law provides it may be determined any time, it may, but if the constitution provides it may be determined any time is not that quite as good as the statute?

Mr. Price: The legislature can not override the constitution.

Mr. Johnsn: And the constitution says that all grants, immunities and privileges shall be subject to amendment, alteration and repeal at any time. It seems to me that is bigger than any statute or anything you can put into the statute law.

Mr. Price: I think you can regulate and control under that provision, but when it comes down to a contractual part you run against the constitution of the United States.

Mr. Johnson: That is the danger of my proposition, and I would like to have to go before a court and argue that.

On motion the committee adjourned to meet at 2 o'clock, P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

COLUMBUS, OHIO, September 10, 1902, 2:00 o'clock P. M.

Pursuant to recess, the Special Committee on Municipal Codes of the House of Representatives, was called to order by the Chairman.

On roll-call the following members were present:

Comings,	Denman,
Painter,	Hypes,
Price,	Willis,
Cole,	Gear,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Chapman,	Maag,
Allen,	Huffman,
Silberberg,	Brumbaugh,
Worthington,	Sharp.

The Chairman: Gentlemen:—The arrangement for this afternoon is that Mr. E. M. Thresher, of Dayton, shall speak to us in the interest of the State Board of Commerce Code, so-called, introduced by Mr. Chapman, of Montgomery. Mr. Thresher will address the committee.

Mr. Thresher: Mr. Chairman, and Gentlemen of the Committee:—I esteem it a great honor to be invited to appear before this committee. I should not be here, were it not for the fact that for some twenty-five years past, circumstances have compelled me, through a very plain and ordinary business man, to give some particular attention to municipal government, and for three or four years past, my associates of the State Board of Commerce have seen fit to place the representation of their interests in my hands, and this is my excuse for being here.

If you ask, what has the State Board of Commerce to do with the municipal code, I reply that from the very commencement of its organi-

zation, it has given attention to this question; it is one of the purposes of its organization, because commercial development and business progress, in very large measure, depend upon good government, the progressive, impartial officers, the tax gatherer, and to freedom from oppression; it goes to where it finds the best opportunity, and where there is the most intelligent government, and the most farseeing statesmanship — there business thrives to the largest extent.

The State Board of Commerce was organized in 1891, and among its various committees was a very competent one, of which I believe Judge Blanding was at the head. Upon the question of municipal affairs, we found that the cities of our state were being disorganized by ill-advised and ripper legislation; that the tendency was away from the constitution; that a pernicious tendency with regard to classification of cities was coming to obtain in municipal government. With a view to correct this. the committee drafted a bill, looking to the organization, or the formation of a code, of a commission to revise the laws of the state, so that the cities might be governed by general laws of uniform application. The result of that was the Pugh-Kebler bill, a most excellent one in its way, and while it undertook to pass upon questions that the State Board of Commerce had never touched, yet we gave it our fullest and most cordial assistance, and tried to see it through the legislature. At the commencement of that session, about three years ago, we had an open meeting; the Senate was kind enough to give us the use of the Senate Chamber, and we extended a written, formal invitation to every member of the Senate and House to come and hear the questions discussed. The meeting was in the evening, and it is a matter of dispute whether there were three or six members of the joint body present. I am willing to concede the six. As one eminent leader when asked what was the progress of the code bill, said: "I don't know; can you blame me for not being ready to vote for a measure of four hundred pages that I haven't read through and don't understand?" Toward the close of the session, when it was apparent that the code was not going to get even respectful consideration, there was a consultation of the executive members of our board, and we said: "This will not do; what is the difficulty?" Why, there were no two cities in the state of Ohio governed exactly alike, and no bill which undertook to bring them all down to one form, could get votes enough to pass it. The result of the consultation was the formation of what is known as the State Board of Commerce bill, which was introduced as the Seiber bill. It was too late

to pass it, but the intention was to have it receive careful consideration and then come up at a subsequent session of the legislature. These were the reasons that led to the formation of that bill.

What is the history of our municipal government? Going back to the old select system of New England, that was ideal for the time; citizens met in town meetings and chose a few selectmen who managed the public affairs as they managed their own private business. But with the growth of the public business, the men who had time to give, were no longer able to give it; the men whose time was valuable were not willing to give it, and so it drifted into the hands of a lower class of men, men who were willing to give time, and then came the election of the city council. But with the further growth of public business, increased public facilities became necessary. First, they needed a lighting plant. The money invested in the first gas plants, was always lost, and by and by the company came to be lucrative, and it was claimed they were charging exorbitant rates — exorbitant profits, and a new company was organized. The price fell because of competition, and both companies lost money. Then shrewdly seeing the advantage, the two companies consolidated, and then the price was put back to the old figure. Then the corporation said: "We must look after our interests." Without taking your time to trace these things further, we can see there the development of the political boss, the man who gives his time to promote legislation. Now, there is nothing like a boss, if you have the right kind, the difference is, we don't get the right kind. And so, with this development, came our complex and highly organized system of municipal government in the various cities of the state.

The elaboration of this system leads to a desire for change in three directions: First, with the natural growth of the city — take the city of Dayton, in which I live; we have a board of water works of three, elected by the people; the board is usually Democratic, elected by Republicans; it is the only elective board in the city and the Democrats usually nominate most excellent men, experts, in fact — and the Republicans elect them. Then we have a Board of Fire Commissioners, which is bi-partisan, elected by the city council; we have another board, which is bi-partisan, appointed, I think, by the Tax Commission. We have a Board of City Affairs, a bi-partisan board, appointed by the mayor, and then we have a Tax Commission, appointed by the mayor. Now, all of these boards have represented the growth of the city, from time to time. Some years ago, the streets were managed by the city council,

but all at once, the bottom fell out of the macadamized streets, and we had to have new streets. The first thing, we had to get a bill through for \$300,000 to provide for new streets; then we got the Board of Review, which created the Board of City Affairs, which has given us our streets, and our streets have been fairly well managed, as these things go. You will notice no two of the boards are alike, each representing some particular phase.

The causes that call for the continuous change in the forms of city government, are three:

First, the natural growth of the city. At first they need but few privileges; by and by they need water works and a fire department and a police department and a police court and expensive streets. From time to time, the old machinery wears out and has to be replaced with new. Then again, a large portion of the city government has come as a protest against the inroads of the spoils system, and the desire to turn Democrats out and put Republicans in, or to turn Republicans out and put Democrats in. Now, the consensus of opinion of those who give the subject study, is, that the city business should be conducted upon business principles; that there is no politics in the putting out of a fire, the arrest of a criminal, or the furnishing of pure water for the children to drink; that should be in the hands of experts, and that, while the people should have the choice to say how these things shall be done, yet, the ones who do the work should be selected because of their special ability to do those things.

Now, that brings me to the point, which is, that our observation has been, that it is impossible to draft any code that will answer for all the cities of the State; there is a demand for change because of the growth of the city; and there is another reason for it, because our cities are obliged to assimilate a large element of foreign population that comes here, the peasant class from foreign countries, and they are not fitted for self-government. I am connected with an insurance company, and about ten or fifteen years ago, we used to get policies from Cleveland, written for Hungarians and Russians, and there was some anxiety about it; we said, "These foreigners can't be trusted;" but presently it was found they were liberty-loving people, they were getting homes; now they are counted among our best citizens. They came here from a foreign despotism, perhaps; they came educated to certain ideals, in name, but knowing nothing about how to carry out those ideals; but they were industrious, and they had to be assimilated. Those same conditions prevail to-day in

our largest cities. Further, there may be a condition existing in one city that will call for a change that is not needed in another, and therefore, we have become convinced that you cannot get a single code that will suit all the cities of the State.

What is the remedy? Why, simply that provided in our bill; that, providing for a general law as to the frame of municipal government, providing what that government shall comprehend,—the minor details, largely insignificant, should be determined on the ground. Whether our board of waterworks in Dayton shall continue as it is, whether it shall be a bi-partisan board of four elected at one, or four or five different periods or whether our government shall be that of the so-called Federal plan, which everybody wants, except the majority of those who have had it let the city determine for itself.

Now, the objection we in Dayton, should make to the Federal plan, is, that it undoes the work of the past fifteen years; that it would tear down all the safeguards which the people need; that it would give unlimited opportunity for spoils; that it would make changes where we don't need change, and would cause continuity where change would be better; but, if the people of Cleveland and Columbus want that, why not let them have it? if the people of Cincinnati and Dayton do not want it, why should they have it? As to the constitutionality of the code you present, I make no argument; that has been a question argued to you by abler men; but upon the question before us, which is one of principle and of the practice of government, I can say there is not a form of government, either in Columbus, or Cincinnati or Dayton or Cleveland, but it has largely come about in the way I have said,—out of their respective needs. Now, what has been the history of this? Why, the cities have quietly dictated their own forms of government; here comes up a bill from the flourishing and goodly city of Springfield, calling for some change; the member from Clarke county introduces it. It refers simply to Springfield. It is asked, "Do your people want it?" The answer is that they do. Then we will vote for it. The city of Dayton has dictated its government; at the last session of the legislature, they passed a bill fixing the salaries of the firemen by statute; it went through, because Dayton wanted it, there was no objection on its part, and nobody else cared.

Now, the principle at issue, that there are local differences which should and must be recognized, is correct; but it has been recognized in an unconstitutional and an illegal and a mischievous way. We propose to do in a rational, constitutional and beneficial way that which you,

in the end, will have to do. We do not present the details of a code, because, as I say, the Pugh-Kebler code met with scant courtesy. Then we considered whether we should have a new code commission; we went all over the ground, and discussed the feasibility of proceeding on new lines. Then came the Committee of the State Bar Association, asking us to join them for the revision of the Pugh-Kebler code, or bill, so we stepped to one side, and gave them the right of way. The bill came before you in the spring; I believe there were about two hundred amendments, but it never had a show of passage.

Any code that you pass, applying uniformly to all the cities of the State, when it goes into operation, and the smaller cities are compelled to take on an expensive form of government that they do not need, in place of the government they like, and want,—will cause difficulty and complication and trouble; you will have the same old difficulty over again, you will find that you have simply transferred the pressure. A carbuncle is coming in an inconvenient part of the body; the physician applies some remedy which scatters it, and the result is, you have half a dozen boils, where you had only one.

You have Cleveland and Cincinnati, which have never agreed with each other about anything for long at a time, and Columbus and Dayton, perhaps, in one class, and each class will be coming up and asking for remedy, because the conditions are burdensome.

Why should not the people be left, under general laws, which fix their charters, to determine the minor details for themselves? If they want a certain thing in Cincinnati that is proper, let them have it. And so with the other cities.

Now, the investigations of the National Municipal League have been immensely interesting; they have gathered the municipal history of all the leading cities of the country, and the fact has developed that there is no form of municipal government that is not doing well somewhere, and that there is no form of municipal government that is not an utter failure somewhere. The reason is, that conditions differ, and what does for one, will not do for another, and what will answer for a third, will not fit either of the other two. You will remember what the Duke Angelo says in "Measure for Measure:"

"We must not make a scarecrow of the law,
Setting it up to fear the birds of prey,
And let it keep one shape, 'til custom make it
Their perch and not their terror."

The figure may be infelicitous, but it seems to me to apply to our forms of municipal government. I think sometimes we can compare it to some of our great lightning express trains, which are made up every day to go around the world; there are the rails, the organization, the power, the equipment the same, every day. The train starts from Cincinnati to go to New York; one day there is the sleeping car and the dining car and the chair car and the express car and the ladies' car and the baggage car and the mail car, each for its various use. You could not make one car that would accommodate all of those; you could not make all trains alike; one day you will have the train made up almost entirely of sleepers, another day, perhaps, half the train will be dining cars, and so it varies. The train is made up according to the conditions and necessities and the service, but it always goes under the general law and the equipment is always there. Now, you have the equipment, we are all under the general law, and you should give the people a chance to express themselves upon these different questions of their own local interests and leave them to determine the details.

As I say, as to the constitutionality, that has been argued by those abler than myself; I shall leave that question to them; but you must not forget the foundation of our organization, and you can always trust the people. A few years ago, the notion was prevalent that the people were not all powerful, and you will remember when the tales of oppression and terror came to our ears from the fair isle of Cuba, and when every man was considering what was to be done. Then came the great calamity that overtook our battleship in the harbor of Manila, and without regard to party or section, all over our country went up the cry of the people, and the power of the people rose, and the *vox populi* was in truth the *vox dei*, and it will always be so. When you make the people understand that you are putting their interests in their own hands, and that you trust them, when you call upon them, that is the answer you will always get, and we shall have no definite and satisfactory regulation of this problem of municipal government, until we go back to the constitution for the enactment of general laws of uniform application, leaving the minor details, under those general laws, to be adjusted to the locality where they are to be put in force.

Now, under any code that is before you—and I have no criticism to make upon any—I am not here for that purpose—under any of these codes, when it come to putting them in operation, you will have difficulty. When you undertake to make them applicable to all the cities, half the

citizens of the State will rise; it will be with them as it was with the Irishman and his coat; when somebody told him, "Pat, your coat doesn't have very much fit to it."—"Sure," says he, "I wasn't there when they measured me for it." Now, the measures of the cities of the State were not there when the code measures were taken, and they will be heard from.

There is a magnificent opportunity, gentlemen, such as has seldom come to the State of Ohio, or to any State, before you now. The State of Ohio has come to be a recognized leader, not only in politics, but in many other things; more than anything else, it has come to be recognized as furnishing the qualities for the leadership of men, and here is an opportunity to take the lead in that which lies at the basis of our system, that organization which finds its ground and warrant for existence in the progress of our communities, our homes, our business, our charities,—all that goes to make up the complex sum of our municipalities, and certainly, it is worthy of giving to it your most mature consideration. We present to you, gentlemen, that which is the mature result of our observation; it is the right thing to do, and it is the only thing, in the long run, that you can do. We have been at it nine years; we may be at it nine years more. For nine years, it has been our business, we are the pioneers in this domain.

Why, gentlemen, do you know that it was the agitation of the state board of commerce that made it possible to bring about that decision—to stop the tide of vicious and unconstitutional legislation?—It is to such studies, it is to such educational measures, that you must look, to maintain and confirm any form of government which you establish.

If any member has any question he desires to ask, I shall be most happy to answer, if I can.

Mr. Hypes: Mr. Thresher, you stated that as it is now organized, your waterworks board is elective?

Mr. Thresher: Yes.

Mr. Hypes: And that because of better nomination by one political party than by the other, the voters of the opposite party saw to it that these men were elected?

Mr. Thresher: That is true.

Mr. Hypes: Suppose a plan is devised, whereby the board or department of public service, and the board or department of public safety, to be composed of one or more men, to be elected rather than appointed,

what, in your judgment, would be the result as to the personnel of that board or department?

Mr. Thresher: In the waterworks board, one man is elected every year for three years. For example, a prominent member of that board is Mr. Gessler, who is the consulting engineer of a large company; he is not a politician, but in the first ward of Dayton, which is Republican by 500, Mr. Gessler, though a Democrat, carried that ward by about 200. There is no politics, as I say, in pure water. I think the people of Dayton would prefer to have the board of city affairs elected, but I don't think they would desire to have them all elected at once.

Mr. Hypes: I inferred that, because of the statement you made in saying that better men were elected as waterworks trustees, simply because they were better men, and not because of any particular party affiliations, that principle would also hold true for these other departments which are elective?

Mr. Thresher: Well, it might or it might not. Now, when the Democratic waterworks trustee was elected, he was the only one elected; all the rest went Republican; the Republicans would scratch one or two, but when we ask a stalwart Republican to scratch the whole ticket, or the main ticket, he won't do it.

Mr. Price: You are president of the state board of commerce?

Mr. Thresher: Yes.

Mr. Price: What kind of an organization have you?

Mr. Thresher: The state board of commerce represents the organization of commercial bodies of the State; its consistent bodies are the Cleveland Chamber of Commerce, the Cincinnati Chamber of Commerce; the Columbus Board of Trade, the Dayton Board of Trade, and perhaps a dozen other minor bodies, and they have associate members, or honorary members, scattered throughout the State; it represents the organized business bodies of the State.

Mr. Price: You have by-laws to govern your organization?

Mr. Thresher: Yes, sir.

Mr. Price: And to govern them at the time they affiliate with you as the state board?

Mr. Thresher: Oh, yes; it is a very elaborate system.

Mr. Price: How many people are represented through the state board of commerce, then, as you would say, without reference to the honorary member you spoke of?

Mr. Thresher: Well, I don't know; I believe the Cincinnati Chamber of Commerce has some 2,000 business firms; the Cleveland Chamber of Commerce perhaps as many, and our Dayton Board of Trade has perhaps 250 to 300 firms; they are representative business firms of the state.

Mr. Price: The Cleveland Chamber of Commerce took action in favor of the Federal plan?

Mr. Thresher: Yes.

Mr. Price: Then that Chamber of Commerce does not attempt to voice its sentiments through your state board?

Mr. Thresher: No; in that case, no. Every one of the constituent bodies is governed by the local influence.

Mr. Price: It had that right?

Mr. Thresher: Yes, most certainly.

Mr. Price: To what authorities on constitutional law have you submitted your code? To what authority have you gone to get advice as to its constitutionality?

Mr. Thresher: Well, I believe you have heard our representative.

Mr. Price: Mr. McMahon?

Mr. Thresher: And Judge Stewart. The constitutional questions I express no opinion on; as I say, I am not a lawyer, only a plain, ordinary business man. Let me say on that question, that we believe the bill to be constitutional; if it is not constitutional, if the constitution does not permit the people of a municipality a voice in the details of the organization of local government,—it is high time to amend the constitution.

Mr. Price: The question now in dispute—I think you can understand it Mr. Thresher, I think I have a fair comprehension, and probably can express it—is, for the last fifty years, under the present constitution, and prior to that, as well, the legislature has, at different times, empowered council to create officers by ordinance; I do not suppose there has ever been a day in the history of Ohio, since early in the beginning of the last century, but what that was the case. But there are certain lawyers now that say the recent decision of the Supreme Court squints in the direction that that power is unconstitutional now, under our constitution.—That is the question now.

Mr. Thresher: Well, sir, I will answer that by telling you that I have a friend who says he never will employ a cross-eyed man or anyone that squints.—Everything should be looked right square in the face.

Mr. Price: There is no power to keep the Supreme Court from

squinting; when they squint, we have to squint, too; they stand supreme over the constitution.

Mr. Thresher: Do you really think so? They may squint, but then I would look straight at it, if I were you. If I should ever be a legislator, I would not squint for anybody.

Mr. Price: You would not advise us to put a bill on the statute books, or a law, with the municipalities in the shape they are now, that would not be of any more force than the laws that have been declared unconstitutional would you?

Mr. Thresher: Well, no; and if I supposed I were offering such a thing, I would not be here. We come with a remedy for all that,—and the only remedy. Now, if you were in the state of a train that is in a ditch, and impeding travel so that no other trains can be run, the first thing to do is to get out the wrecking train, get the cars and debris off the track, put your train on the track, then start the trains to running on schedule. Our State Board of Commerce will meet next January; when the legislature meets again, we shall be glad to have the use of the senate chamber and we hope you will all come and meet with us.

Mr. Price: I have this to say, myself, that I don't think the decision of the Supreme Court goes quite so far as that; I think council, under our constitution, has power to create an office by ordinance. But the threat is made that that power is going to be overturned; then what?

Mr. Thresher: Oh, well, we have heard whole families talk that way. The legislature of the State of Ohio is going to be here doing business every year; if there is any doubt as to our constitution, let us amend the constitution. But I do not give an opinion; why should a plain, business man give an opinion on a constitutional question?

Mr. Price: I am not asking you to give an opinion; I am not asking you to discuss the constitutional question. I would look at those myself, being a lawyer, and if I wanted to know something about business, I would probably come to you. But I wanted you to understand something about the propositions that are confronting us. There is a sort of an inspiration through certain codes, or an attempted inspiration, that certain codes will be held constitutional, and that others would not be?

Mr. Thresher: Well, you know the old hymn,—“Sure I must fight, if I would reign,—increase my courage, Lord.”

Mr. Worthington: If I understand you, what your organization wants, is a flexible code?

Mr. Thresher: Which takes out of politics and out of the legislature the municipal government of the cities, and leaves them to settle those things, instead of fighting them out here,—provide for general laws.

Mr. Worthington: You think the same kind of a code that would apply satisfactorily to Dayton, might not suit Cleveland?

Mr. Thresher: I am sure of it.

Mr. Worthington: Therefore you want it flexible enough to fit both?

Mr. Thresher: To adapt it to different cities.—Gentlemen, I wish to thank you for your courtesy in hearing me. I bid you Godspeed in your important work, and I am sure it will be satisfactory, when it is done.

On motion, the Committee went into executive session.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

WEDNESDAY, SEPTEMBER 10, 1902.

7:30 P. M.

The committee met pursuant to adjournment, all members being present, except Messrs. Painter, Guerin and Cole.

The Chairman: We have before us tonight a portion of the programme which had been arranged for tomorrow. Mr. York, who needs no introduction to this committee, will speak upon the merits of the York code.

Mr. York: Mr. Chairman and Gentlemen of the Committee:

I thank you for your kindness in extending to me an opportunity to make a few remarks in support of House Bill No. 9. It is proper, I should say, that this bill has been drafted by a gentleman who was more able to draft an important bill than myself. When it came into my hands I had no knowledge of the bill, but since that time I have given it considerable thought. The bill has been printed only a few days, but I take it for granted the committee undoubtedly have read the bill and understand the substance of it.

This bill contains all the subjects that any bill contains that has been introduced to the General Assembly. All the powers mentioned in section 1692, Revised Statutes, are contained in this bill, commencing with line 15, and are contained within the second section. It also contains the present provisions providing for the organization of cities and villages. The only things that should raise any question before this General Assembly in this bill are the first fourteen lines, or, commencing with line 8 and ending with line 14, inclusive.

The bill provides purely a home rule plan as to all of the subjects mentioned in these lines; that is, that the municipality shall have the power to maintain all the departments that might be necessary in any municipality. The present plan is that these departments are to be prescribed by a general statute enacted in long terms, covering several pages, while this plan proposes to submit the question of establishing the departments that the cities desire to a constitutional convention, a convention consisting

of delegates elected by the municipalities, which should meet and establish a constitution for the municipalities, and under this constitution they may have home rule. The city of Cleveland might have the federal plan, while the city of Cincinnati might have the board plan and the city of Columbus any other plan.

The only question that can be raised about this bill is the question of its constitutionality. There is a general demand of the people of this state that they have the privilege of saying in their own municipality whether they shall have a federal plan, a merit system, a board plan or any other kind of plan. If our constitution authorizes that and it is within the power of the legislature to pass a law of such nature, this General Assembly can soon adjourn and go home and we can avoid assuming a responsibility and a duty here which is rather more than we ought to undertake.

The subject of this discussion is whether the proposed matter incorporated in House Bill No. 9 will stand the test of the constitution. It is not my purpose to indulge in a discussion of the bill other than its constitutional features. When we consider that our present constitution, now over fifty years old, was adopted for the express purpose of arresting and preventing future evils which had become the result of improvident legislation under the old constitution, and that, the supreme court of Ohio in more than thirty different cases has held a certain construction of those parts of the constitution pertaining to the organization and government of municipalities, and that such construction has been recently reversed by the same court, we are led to consider a new interpretation of the constitution. An examination of the decisions of our supreme court furnish us but little, if any, light upon the subject now under discussion, and, we are therefore bound to conclude that, whether this bill be constitutional or unconstitutional, our argument must be found in reason and established principles rather than in a specific judicial determination of the question by our own courts.

The main question involved in the discussion of this bill is whether the General Assembly has the constitutional power to confer upon municipalities legislative functions to that extent which may be necessary to give the people of each municipality the privileges of local self-government or home rule. This subject involves the consideration of section 1 and 6 of article 13 and section 26 of article 2 of the constitution. The first to be considered is section 6 of article 13 which has so often been repeated that perhaps it may seem redundant in this discussion to repeat it again, but

being unable to discuss the subject without repeating it and analyzing it in sections, I beg to repeat it again. Section 6, article 13, reads: "The General Assembly shall provide for the organization of cities and villages by general laws and restrict their power of taxation, assessments, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power — the true literal signification of the language used in this section nowhere expressly indicates that the General Assembly shall provide for the local government of cities and incorporated villages, but does expressly provide for the organization of cities and villages by general laws, and it will be noticed that this section does not, by the use of any express language, provide that the General Assembly shall provide, by general laws, for taxation, assessments, borrowing money, contracting debts, and loaning of credits by the municipalities, but expressly provides that the General Assembly shall, by general law, restrict such power so as to prevent the abuse thereof.

If the language used in this section was found in any other place than in the constitution of Ohio, unaccompanied by any decisions, it appears to me that its language is so plain that its construction could not fairly be called in question, and if we were starting anew and were organizing the first city in Ohio under this section of the constitution, our first impression would be that the General Assembly should provide by a law for the organization of the municipality, or in other words, to provide, by a law, for the creation or birth of the municipality, and that the municipality should be born in accordance with the provisions of the General Assembly authorized by this section of the constitution, and after it had become created and organized that the only control of its future that the General Assembly could retain would be the power to restrict it in the levying of taxes, making assessments, borrowing money, contracting debts and loaning its credit within the limitation so as not to be an abuse of the power it had given to it by its creation; and this construction must be true unless the power to create municipal corporations necessarily implies the power to provide for their internal government for all time to come, while they exist as municipalities.

For the sake of this discussion, I shall assume that the language used in section 6 of article 13, implies the authority to provide for the government of municipalities and that after reading into this section what is implied, that it reads — "that the General Assembly shall provide for the organization and government of cities and incorporated villages by general

law.—And it must be conceded that, pursuant to section 26 of article 2, such laws are of the general nature and must have a uniform operation throughout the state, and that they cannot be passed to take effect upon the approval of any other authority than the General Assembly and that under section 1, article 13, the General Assembly is prohibited from passing special acts conferring corporate powers. Giving these sections a strict construction of all of the terms expressly stated and assumed or implied, nowhere is it intimated, either expressly or by implication, that the power of the General Assembly to confer legislative functions upon municipalities is prohibited. If we pass a general law which confers corporate powers it cannot be an inhibition of section 1, article 13, of the constitution, for the language of this section is too plain and the decisions of the court as to its construction are too many to cause a halt here; for this section has reference only to special acts conferring corporate powers, and not to general acts, and nowhere in the constitution is it found that the General Assembly is prohibited from passing general laws which have a uniform operation throughout the state, conferring corporate powers. The sole restriction in the conferring of corporate power is confined by this section of the constitution to the passing of special acts by the General Assembly. Bill No. 9 is a proposed law of a general nature and has a uniform operation throughout the state for it provides one plan and system for the organization of cities and one for the organization of incorporated villages, and though it does not particularly specify the departments that each city or village shall have, or whether they shall be of the board or federal plan, it, nevertheless, has a uniform operation throughout the state for the reason that it provides one general plan for the organization of municipalities under the respective divisions of cities and villages, and one plan for putting in operation of a system of ordinances, rules and regulations for their local government; and while it is true that under this bill the city of Cleveland might provide for a federal plan of government; the city of Cincinnati for a board plan, and the city of Columbus for a different plan from either, it is yet true that the foundation for the authority for each and all of the plans is a general law applicable to the whole state, uniform in its operation, but subject to discretionary exercise in such manner by the municipality as the people thereof may demand, and we are therefore led to a consideration of two simple propositions.

First: "Will a general law, having a uniform operation throughout the state, expressly providing for the organization of cities and villages,

and for the organization and administration of municipal government by the municipalities themselves within the limitations expressly mentioned in the general law, be a delegation of legislative authority by the General Assembly?"

Second: "That if it be a delegation of such legislative authority, it is prohibited by the Constitution?"

By reference to the debates of the conventions of 1850-51, the result of which is our present constitution without change as to the question under this discussion, we find that the great controversy among the delegates to that convention was in reference to private corporations, and that whenever an attempt was made to offer an amendment pertaining to corporations, it resulted in much discussion and that the main subject of the discussions was, private corporations, and that section 6, article 13, was adopted without any extended debate involving any of the questions that we are considering now, and I am informed that this had much to do with the interpretation of the Constitution pertaining to the classification of cities and villages in the first leading case which our Supreme Court has recently overruled; for the reason that the old Constitution permitted the creation of municipalities by special acts and the objection was not so much to special acts in municipal affairs as to special acts pertaining to private corporations, and that when our present Constitution took effect there were many municipalities which, under the old Constitution had become created by special acts and it was found necessary even under the new Constitution to meet the varied conditions of the different municipalities, that the same municipalities be perpetuated. And that construction of the present Constitution recognizing the classification of cities and villages, was a matter of necessity and local convenience rather than a problem of strict construction of the Constitution. And following that principle the General Assembly have provided by special acts for the government of cities and villages, and the Supreme Court have held that they were authorized by the Constitution, and, now, since the Supreme Court have held that all such special acts are unconstitutional, we must conclude that while the special acts themselves are unconstitutional, it is not because of the subject matter to which they refer or contain, for the subject matter of such acts have been demanded and tolerated by the courts by reason of the necessity of the case, but that it is the special act itself which is authorized by the Constitution, and therefore it is not against the policy nor spirit of the Constitution for the city of Cleveland to have

a Federal plan, the city of Cincinnati to have a board plan, and the city of Columbus to have any other plan, but the special act in each particular case providing a specific plan, is the thing that is unconstitutional, and therefore while it has been the demand of the people, the aim and object of the General Assembly, and the settled policy of our Supreme Court that a system of government in one city different from that in another, might properly exist under the Constitution, and under all former decisions it might be created by special acts, the recent decisions of our Supreme Court goes further than to declare that this form of government must be provided by general laws, and not by special acts. And this decision is not so far-reaching in its scope as to create any suspicion that the court had any other notion than that all local government for municipalities must be provided by a general and not a special act of the General Assembly.

First proposition: Will a general law, having a uniform operation through the state, expressly providing for the organization of cities and villages, and for the organization and administration of municipal government by the municipality itself within the limitations expressly mentioned in the general law, be a delegation of legislative authority by the General Assembly.

As to this proposition, while there is a serious doubt, and much authority can be cited, that it would not be a delegation of legislative authority, on the principal that legislation incidental to the government of a municipality once created by a general law is necessarily an implied power of the municipality, I shall concede that it would be a delegation of legislative authority to the municipality and such concession being made, further discussion will be based upon the second proposition.

Second proposition: Is such delegation of legislative authority forbidden by the Constitution? If it is not expressly or impliedly forbidden by the Constitution then we must inquire whether when the Constitution is silent as to the delegation of legislative power to municipalities, which I assume to be the case under our Constitution, whether it can be exercised as incidental to municipal government.

After having examined the authorities, I am thoroughly convinced that it is no longer an open question that the legislative branch of the state government has power to delegate legislative authority to a municipal corporation. Here I desire to make an explanation. I have discovered

there is a difference between the delegation of powers to make laws and the delegation of legislative authority.

No man would contend for a moment that the general assembly had power here to transfer the law-making power to the city council of Cincinnati to levy taxes on the State of Ohio or to sell the Ohio canals, because that would be transferring the power to make laws to the city of Cincinnati, that would be a delegation of law-making power; but the question that we are considering now is whether when the general assembly have passed a law providing that the municipalities shall have a code they cannot under the constitution delegate legislative power upon an authority expressly mentioned in a general law, and when I use the words "delegation of legislative authority" I desire to have it understood in that sense: I quote from Volume 20, *American and English Encyclopedia of Law*, second edition, page 1139:

"The legislative branch of the government has, as a rule, power to delegate legislative authority incidental to municipal corporations to the municipal government thereof; but where there is a constitutional provision prohibiting the State from being a party to or interested in work of a specific nature, or engage in carrying on such work, the legislature cannot authorize municipalities to undertake or become interested in work prohibited by the state itself."

Following this subject is a long list of authorities and by an examination of which it will be found that this proposition is fully supported; the principle being, that where legislative authority in a municipal corporation is incidental to its municipal government, the General Assembly has power to delegate such legislative authority to the municipality, but where there is a constitutional provision prohibiting the State from doing a certain thing, the legislature cannot authorize municipalities to do that which it is prohibited from doing itself. The foundation for the power of the General Assembly to delegate legislative authority to municipal corporation stands upon higher grounds than a claim for such authority by any person, board or tribunal, not municipal, as municipal corporations are the highest class of political departments of the State and it is absolutely necessary for their existence that they have the power of local legislation in order that the ends of government, through the General Assembly, might reach the circumstances and needs of a dense population, which the General Assembly itself cannot practically reach by specific laws.

I now read from Cooley's Constitutional Limitations, beginning on page 225, which appears to me to be in support of the proposition for which I am contending—"In the examination of American constitutional law, we shall not fail to notice the care taken and the means adopted to bring the agencies by which power is to be exercised as near as possible to the subjects upon which the power is to operate.

In contradistinction to those governments where power is concentrated in one man, or one or more bodies of men, whose supervision and active control extends to all the objects of governments within the territorial limits of the State, the American system is one of complete decentralization, the primary and vital idea of which is, that local affairs shall be managed by local authorities, and general affairs only by the central authority? It was under the control of this idea that a national constitution was formed, under which the States while yielding to the national government complete and exclusive jurisdiction over external affairs, conferred upon it such powers only, in regard to matters of internal regulation, as seemed to be essential to national union, strength and harmony, and without which the purpose in organizing the national authority might have been defeated. It is this, also, that impels the several states, as if by common arrangement, to subdivide their territory into counties, towns, road and school districts, and to confer powers of local legislation upon the people of each subdivision, and also to incorporate cities, boroughs, and villages wherever the circumstances and needs of a dense population seem to require other regulations than those which are needful for the rural districts.

The system is one which almost seems a part of the very nature of the race to which we belong. A similar subdivision of the realm for the purposes of municipal government has existed in England from the earliest ages; and in America, the first settlers, as if instinctively, adopted it in their frame of government, and no other has ever supplanted it, or even found advocates. In most of the colonies the central power created and provided for the organization of the towns; in one at least, the towns preceded and created the central authority; but in all, the final result was substantially the same, the towns, villages, boroughs, cities and counties exercised the powers of a more general nature.

The several state constitutions have been framed with this system in view, and the delegation of power which they make, and the express and implied restraints which they impose thereupon, can only be correctly

understood and construed by keeping in view its present existence and anticipated continuance. There are few of the general rules of constitutional law that are not more or less affected by the fact that the powers of government, instead of being concentrated in one body of men, are carefully distributed, with a view to being exercised with intelligence, economy, and facility, and as far as possible by the persons most directly and immediately interested.

It has already been seen that the legislature cannot delegate its power to make laws; but fundamental as this maxim is, it is so qualified by the customs of our race, and by other maxims which regard local government, that the right of the legislature, in the entire absence of authorization or prohibition, to create towns and other inferior municipal organizations, and to confer upon them the powers of local government, and especially of local taxation and police regulation usual with such corporations, would always pass unchallenged. The legislature in these cases is not regarded as delegating its authority, because the regulation of such local affairs as are commonly left to local boards and officers is not understood to belong properly to the state; and when it interferes, as sometime it must, to restrain and control the local action, there should be reasons of state policy or dangers of local abuse to warrant the interposition: Again, on page 141, Cooley's Constitutional Limitations, Mr. Cooley says, "Nevertheless, as the incorporators have a special and peculiar interest in the terms and conditions of the charter, in the powers conferred and liabilities imposed, as well as in the general question whether they shall originally be or afterwards remain incorporated at all or not, and as the burdens of municipal government must rest upon their shoulders, and especially as by becoming incorporated they are held in law to undertake to discharge the duties the charter imposes, it seems eminently proper that their voice should be heard on the question of their incorporation, and that their decisions should be conclusive, unless, for strong reasons of state policy or local necessity, it should seem important for the state to overrule the opinion of the local majority. The right to refer any legislation of this character to the people peculiarly interested does not seem to be questioned, and the reference is by no means unusual.

The first municipal code that was enacted after the adoption of the present constitution, passed May 3rd, 1852, volume 50, page 223, provided in twenty sections the general powers and privileges of municipal corporations, some of which conferred upon the legislative authority of the municipi-

palities in general terms the same principles of home rule which are proposed by this bill, except not to so great an extent. For instance, in section 34, of that act, it was provided that municipal corporations shall have power to make and publish, from time to time, by-laws or ordinances not inconsistent with the laws of the state for carrying into effect or discharging the powers or duties conferred or required under that act, and it further made it the duty of municipal corporations to make and publish such by-laws and ordinances as shall be necessary to secure such corporations and their inhabitants against injury by fire, thieves, robbers, burglars, and all other persons violating the public peace, for the suppression of riots and gambling, and indecent and disorderly conduct, for the punishment of all lewd and lascivious behavior in the streets and all other public places, and they shall have power to make and publish such by-laws and ordinances as to them shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, comfort and convenience of such corporation and the inhabitants thereof.

Section 35 provided that by-laws and ordinances may be enforced by the imposition of fines, forfeitures and penalties may be prescribed in each particular by-law or ordinance or by a general by-law or ordinance made for that purpose.

These same subjects have been carried into the present Revised Statutes, divided, however, in several sub-sections to section 1692.

Sub-section 3 provides that the municipal corporation shall have the power to prevent injury or annoyance from anything dangerous, offensive or unwholesome, and to cause any nuisance to be abated. Under this sub-section the village of St. Mary's passed an ordinance making it unlawful to store or keep in larger quantities than five quarts in any one place, any dynamite, nitro-glycerine, or other explosives within the corporate limits. Hays was prosecuted for a violation of that ordinance. The question raised in the case was that the ordinance under which the party was convicted was invalid for want of power in the village council to pass it. The court in the case of Hays vs. the Village of St. Mary's, 55 O. S. 197, held that the passage of that ordinance was within the power conferred by said subdivision 3 of section 1692. In this case we have the principle where our supreme court has held that the council of a municipal corporation might pass an ordinance declaring that the keeping of dynamite or nitro-glycerine in larger quantities than five quarts in one place is a nuisance, whereas the general provisions of the statute says nothing more than that the council

may provide, by ordinance, to prevent injury or annoyance from anything dangerous, offensive or unwholesome, and to cause any nuisance to be abated. This is purely a delegation of legislative authority to the council to legislate upon the subject of a nuisance in its discretion, and in a thousand ways, and pertaining to a thousand subject matters none of which could have been contemplated in the passage of this sub-section 3, and the force and effect of this section can serve no other purpose than to confer upon the council of a municipality the entire authority to legislate upon such subjects, and in this case the court held that the village council had such legislative authority under this section, and cited *White vs. Kent*, 11 O. S., 560, in support of its decision.

Sub-division 7 of section 1692 provides that the council may regulate, restrain or prohibit theatrical exhibitions and public shows. The supreme court held in the 11th O. S., 534, *Baker vs. Cincinnati*, that the municipal corporation might provide, by ordinance, for the charge of a sum of money for a license to give theatrical exhibitions under this sub-section 7. Here the sub-section does not provide for a license not for a license fee, but the court held that the municipality had such legislative authority and that an ordinance providing for a license and a license fee is not in violation of any provisions of the constitution.

In the case of *Buckholter vs. the Village of McConnellsville*, 20 O. S., the supreme courts lays down this proposition. "It is for the law-making power of the state to determine, within the limitations of the constitution, to what extent city or village councils shall be invested with the power of local legislation."

Many other cases might be cited, showing the extent to which our supreme court has already gone in holding a delegation of power to be properly granted to municipalities under a blanket statute, not specifying the subject matter of the municipal legislation. In the discussion of this proposition, my attention has been called to but one case of our supreme court, cited by counsel, taking the opposite side of this issue, as tending to support the proposition that the delegation of legislative power is prohibited by the constitution, but on examination of this case, being *State vs. Hawkins*, 44 O. S., 110, — it will be found that the supreme court did not have this question before it for consideration, and the only thing it held was that the organization and government of cities is left by the constitution to the General Assembly, with the requirement that it shall, by general laws, provide therefor, and that the entire system of municipal

government of this state has, in the exercise of this power, been created by the legislature. The only thing that the supreme court said in this case was, that the exercise of the power has been created by the legislature, but nowhere did it say, or even intimate, what the power of the General Assembly might be in the delegation of its authority to a municipality.

And for light upon this subject it will be necessary for us to travel beyond the decisions of our supreme court into other states which have constitutional provisions similar to ours, where the delegation of legislative authority to municipalities has been passed upon by the supreme court of such states.

At the time of the decision in 78 Mo., which I will notice later, the Missouri constitution prohibits the General Assembly from passing local or special laws incorporating cities, towns, or villages and requires that all general laws shall have a uniform operation throughout the state. I take it that the provisions of the Missouri constitution then were similar to ours.

In *Covington vs. the City of East St. Louis*, 78 Mo. 548, the court held: "The General Assembly, since the organization of our state government, has possessed the power to delegate legislative authority incidental to municipal government, to cities, towns and villages; but, since the adoption of the present constitution this can only be done by general law, uniform in its operation; when, however, it is done by such law, the constitutional mandate is fully complied with, and the ordinances to be adopted by different municipalities, under the power so conferred may be as variant in their terms as the varying of municipal necessities or sense of public policy, in those who exercise the legislative authority, may require. All ordinances are necessarily local in their application, so the construction contended for, if true, would lead to the absurdity that it is impossible, under the present constitution, to invest municipal authority to make ordinances because they cannot be made of general and uniform operation throughout the state."

In the case of *Des Moines Gas Co. vs. the City of Des Moines*, 44 Iowa, 505, the question of the legislative authority of the council of the city of Des Moines to grant a franchise in the public streets of that city was considered, and the court held that there can be no doubt but what it is competent for the General Assembly to delegate to corporations of this character the power to enact ordinances, which when authorized, to have

the force and effect of laws passed by the legislature of the state, within the corporate limits."

This same proposition is made a subject of section 245, in 1st Dillon on Municipal Corporations. This Iowa court further held, repeating the language of the court, "within the sphere of their delegated powers, municipal corporations have absolute control as the General Assembly would have if it never had delegated such powers and exercised them by its own laws. The discretion of such corporations within the sphere of their powers is as wide as that possessed by the government of the state. And discretionary powers are to be exercised according to their judgment as to the necessity or expediency of any given measure."

In *Taylor vs. the city of Carondelet*, 22 Mo., 105, the question involved was the right of the General Assembly to delegate its powers to a board of trustees of the city and the court, in that case, said: "The corporations have, within the sphere of their delegated powers as absolute control as the General Assembly would have had it retained the delegated powers and exercised them by its own laws. This delegation of power substituted the trustees of the town for the General Assembly, and, to the extent of the powers delegated, vested them with the right to exercise that authority as effectually as it might have been exercised by the legislative power of that state."

In the city of *St. Louis vs. Bofflinger*, is a case where the General Assembly empowered the state to make regulations and prevent the introduction of contagious diseases into the city, and no more extensive grant of power was contained in the act of the General Assembly. The court held that under such grant of power the government of the city must have a discretion as wide as that possessed by the state government, in the choosing between different measures for accomplishing the end. That an ordinance passed under such grant of power is to be interpreted and exercised as if it had been passed by the General Assembly.

In the case of the *United States vs. the City of New Orleans*, 8 Otto, 481, the court held that the power of taxation belongs exclusively to the legislative branch of the government, but may be delegated by the legislature to municipal corporations; that when a municipal corporation is created, the power of taxation is vested in it as an essential attribute, for all the purposes of its existence, unless its exercise be in express terms, prohibited; and that when authority to borrow money is conferred upon a municipal corporation, the power to levy a tax for

its payment accompanies it, without special mention that such power is granted."

Many authorities might be cited in other states where courts of high standing have held that it was not only the general policy of the government to confer the power of local legislation upon municipalities, but that it was within the spirit of the constitution and that the general legislative authority on the part of the municipality is a necessary incident to the administration of government, and as our constitution does not expressly or impliedly prohibit the delegation of legislative authority to a municipality in this state, our arguments in support of the constitutionality of House Bill No. 9 is not unsupported by the weight of authority.

Mr. Willis: I understand the general purpose of this bill, Mr. York, is to provide for the largest measure of home rule by means of the legislature providing for the organization of cities and villages and not organizing them. Believing in the principle of home rule, how do you account for the specific enumeration of prices, etc., on page 13, that gas shall be sold at not to exceed so much per 1000 feet?

Mr. York: Article XIII, section 6, of the constitution provides: "The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power." I believe by implication it is within the power of the general assembly to fix the maximum which the municipality might charge.

Mr. Willis: The question is not as to the power of the general assembly to do that, but as to the consistency of it, if you believe in this doctrine of absolute home rule.

Mr. York: Home rule does not mean that a man may jump out of existence with a franchise. It does not mean he shall levy unjustly any taxes.

Mr. Price: The legislature has the power.

Mr. York: The legislature has that power, and the reason why it is put in here is that there are laws in our statute book that cover that same subject, except in reference to gas.

Mr. Price: I don't know if it is fair to ask you a question on a few other sections of the constitution at this time, but take Article II, section 27. I would like you to read that article aloud, if you will.

Mr. York: Yes, sir (reading aloud Art. II, section 27 of the constitution). Do you understand that that has reference to municipal officers?

Mr. Price: What about police courts?

Mr. York: This bill makes special provision for police courts.

Mr. Price: Does that apply to the police court?

Mr. York: I should think it did, because I don't believe the police court is a department of the municipal corporation.

Mr. Price: So that the legislature would have to provide some rule of compensation?

Mr. York: There is no question about that. The police court was never known in the early history of municipalities as being one of the departments, as one of the incidental elements, of a municipality.

Mr. Price: Suppose that we create the office of mayor for a municipality. Does that come under that section?

Mr. York: I am a little inclined to think it does, and this bill covers that very question. If you will read this bill over you will find it retains the same old sections we have now with reference to the powers and duties of the mayor. It is nowhere changed.

Mr. Price: Suppose the legislature delegates the authority to create an office to the municipality?

Mr. York: To create the office of a mayor? I doubt it.

Mr. Price: Any office?

Mr. York: If he is acting as no more than president of the council it can be done, but if he performs judicial powers it is not a part of the municipal corporation and he does not come under that section. A president of the council may be provided for by a municipal convention, but a mayor who has judicial powers cannot be.

Mr. Price: Suppose you don't give a mayor judicial powers but still create the office?

Mr. York: I don't think he ought to have.

Mr. Price: Look at Article II, section 27. Does that apply to municipal corporations?

Mr. York: I don't think that has anything to do with it.

Mr. Price: Suppose a municipality creates a position in a corporation. Can the legislature appoint to it?

Mr. York: No, sir; I don't think so.

Mr. Price: If the appointing power is taken away from the legislature by that section, why doesn't it apply, then, to municipalities? That is the only section limiting the appointing power of the legislature.

Mr. York: This question never has been raised in the history of the world before. You won't find a case of that kind in the books any place. There is one case, I begin to think now, where the general assembly provided that a municipality might provide for the preservation of the public health, and under that they went on and created officers. I think you will find that in 29 Ohio State. They created a board of five officers without any statute authorizing it.

Mr. Price: Supposing, then, as it is in these codes, that we are creating officers when we create the board of public safety, and the board of public service, and the mayor, leaving out his judicial powers. If we are creating officers for the purpose of assisting state government, would you say we are able to fix the rule of compensation?

Mr. York: No, sir; I don't think so.

Mr. Price: Then that section in that much would not apply?

Mr. York: No, sir; I don't think it is a part of the business of the general assembly to fix the fees, or regulate the assessments, or the rates of taxation, or compensation of officers in any municipality. They simply may limit or restrict.

Mr. Price: Suppose the contention is true that we have to project the officers into the municipal corporation from this legislature, the legislature exercising the power of creating officers. Would we still have to fix the salaries or not?

Mr. York: I doubt very much. The idea is novel; it has never been raised before. I don't imagine those sections or any other section in the constitution of Ohio has any other reference to the organization of municipalities than section 6 of Article XII.

Mr. Price: I am not arguing against you.

Mr. York: I understand. You are asking me a question there that I have not given very much thought to, but my suggestion is the matter is a little ridiculous.

Mr. Gear: Isn't it true the legislature in giving municipalities the legislative authority to issue bonds has not mentioned specifically the rate of interest, but has fixed a maximum higher than which they shall not go, and has also stipulated that bonds shall not be sold for less than their par value?

Mr. York: That is true.

Mr. Gear: The legislature delegates that power, does it not, to the council?

Mr. York: My notion of it is that this bill will carry with it a delegation of authority that will authorize the municipality to go ahead and legislate as far as the general assembly can legislate upon any subject that is necessary and incidental to carry on that government, not according to the plan of the general assembly, but according to the needs of the community. That was the intention of the constitution, I believe, and that is what our courts are getting at.

Mr. Gear: On page 13, where you fix the price of gas, water, etc., you don't mention there that no municipal bonds shall be sold for less than their par value, and yet every act of the general assembly for fifty years has provided that no bonds shall be sold for less than their par value and that the rate of interest shall not be beyond a specified amount.

Mr. York: That is true, but this bill does not provide for the sale of bonds. It leaves unchanged certain things that have not been affected by the decision of our supreme court, that have been held for years since the present constitution. For instance, the general plan of issuing and selling bonds under the general law is retained. The general plan of incorporating a city or a village is not disturbed. That still continues. The only thing that this bill does is to carry in one section all the general powers known in section 1692 and all the acts that have been passed supplementary to the section, and further than that it provides that you can have home rule on the federal plan, or on the board plan, just as well as you can have home rule under the nuisance act. I venture to say in this state under the head of nuisances there are more than fifteen thousand different ordinances, perhaps on that many different subjects, under the head of nuisances. The legislature has simply said you can legislate on the subject of nuisances and you can put anything under that head and go ahead. If the legislature can do that, I claim the general assembly can do more and say you may legislate on the different departments of the city, that it is just as important that the government should be administered by officers as it is that a man should be put in jeopardy and imprisoned because he has committed a nuisance. But in answer to your question, that matter is not disturbed in this bill. The general law on that particular subject remains as it is.

Mr. Price: I was very much interested in Mr. York's address. He had an excellent brief. I move that Mr. York be requested to show us authority, if he can, that municipal councils or municipal legislative bodies have authority under our constitution to create offices. He did not meet that.

The motion was carried.

The Chairman: Mr. York will take the burden imposed upon him and work it out.

The Chairman: We will hear now from a gentleman representing the Municipal League of Cincinnati who has something to say on the subject of the Merit System.

Mr. Francis Bacon James, of Cincinnati: Mr. Chairman and Gentlemen of the Committee—The people of Cincinnati having observed the advantages the merit system of appointments in the fire and police departments and the complete transformation of those departments after the change of the law of ten or eleven years ago, when a new charter was given to Cincinnati, and having also observed the workings of the system in the federal government and in Massachusetts and New York, are anxious that the merit system of appointment, in some form at least, should be extended to the other departments of the city government of Cincinnati. The Cincinnati Municipal League, on whose behalf I will say these few words, which is composed of representative business and labor organizations, such organizations as the Chamber of Commerce and the Business Men's club, have adopted a resolution saying that no matter what code is adopted they would request that there be inserted therein some provision extending a merit system of some kind to every department in addition to the police and fire departments.

Those who have suggested the amendments which I will offer, and they are extremely brief, have kept in mind the words of Mr. Dorman B. Eaton, the great authority on municipal government and the administrative branches of government in America, that the failure of the federal law of 1871 was brought about by a too radical attempt to reform the branches of the federal government and who said that the success which has grown out of the federal law of 1883 has been due to the conservative spirit demonstrated and shown by the president of the United States and his various civil service commissions in gradually introducing a merit system into the federal government. With that in view an amendment has been suggested in the sections relating to the council, the mayor, the auditor, the treasurer and the administrative

boards, that where the language is that the employes shall serve for three years there be inserted: "And said employes, except appointees in the classified service, shall serve for three years," so that there shall be no fixed term of office for the appointees in these various departments where the persons come within the classified service.

It is then suggested that an additional chapter, consisting of three brief sections, be added as Chapter IIIa to the Nash code so as to give absolute home rule to each city as to the form of the merit system and as to what extent the people of each municipality desire to purify the municipal service. So it is suggested in Chapter IIIa there shall be put as supplemental sections, sections 113a, 113b and 113c, as follows:

IIIa.

"Section 113a. The mayor of each city shall appoint three (3) persons, electors of said city, a board of commissioners by the name and style of "The (here insert the name of city) civil service board." The council of each city shall provide, by ordinance, for the terms of office, oath, bond, place of meeting, compensation, the organization and officers of said board. Vacancies by resignation or otherwise shall be filled for the balance of the unexpired term by the mayor. The mayor may remove, for cause, any or all of said commissioners, upon notice and hearing. Said board shall appoint clerks and examiners, as may be provided for in the rules hereinafter provided. Said board shall have power to investigate generally the administration of the classified service and laborers, and to subpoena and examine witnesses and compel the production of books and papers, and the presiding officer of said board shall have power to administer oaths. Witnesses shall be allowed the same fees as witnesses in courts of record.

"Section 113b. The mayor shall promulgate rules and amend the same from time to time, which shall:

"First. Classify the civil service of said city, which classified service shall not include the following, to-wit:

- "(a) Private secretary and the chief executive clerk of the mayor.
- "(b) The chief clerk or secretary of each board;
- "(c) Examiners of the civil service boards;
- "(d) Elective officers;
- "(e) Heads of departments;
- "(f) The chief deputy of each department;
- "(g) The solicitor and his assistants;

"(h) Members and officers of boards;

"(i) Employes of the fire department;

"(j) Employes of police department;

"(k) Superintendents, principals or other teachers of schools;

"(l) Laborers.

"Second. Provide for the examination by or under the supervision of the board, or both, of all appointees in the classified service, which examinations shall be non-competitive, limited competitive or open competitive, or either or all.

"Third. Provide a period of probation, which shall not be less than three (3) months or more than six (6) months.

"Fourth. Provide for promotions on the basis of ascertained merit.

"Fifth. Provide for removals by said board, for cause, and for suspensions pending charges.

"Sixth. Provide for clerks and examiners for said board, when deemed necessary, and fix their compensation.

"Seventh. Provide for the registration of laborers.

"Eighth. Forbid political assessments and regulate voluntary political contributions.

"Ninth. Provide for the time of meetings of said board.

"Tenth. Provide generally the duties of said board.

"Section 113c. The commissioners shall either personally, or by examiners by them appointed, examine all appointees to office in the classified service, when said examinations shall be non-competitive; and all candidates for appointment in the classified service when said examinations shall be limited competitive or open competitive; said examinations shall be practical in their character, and for the sole purpose of testing the fitness of the person for the position to be filled."

We suggest this short supplement will give in the first place the widest home rule; in the second place it will be a conservative advance along the lines that those who are opposed to a radical change in the introduction of the merit system can be satisfied, and those who believe in preserving partisanship can be satisfied and those who believe in the merit system can also be satisfied. There is an elasticity about it so that the people of each municipality can determine for themselves how far they desire to purify their local politics or how far their local politics needs purifying.

On motion the committee adjourned to meet at 9:00 a. m. on Thursday, September 11th.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

SEVENTY-FIFTH GENERAL ASSEMBLY.

EXTRAORDINARY SESSION.

COLUMBUS, OHIO, September 11, 1902, 9:00 o'clock A. M.

The Special Committee on Municipal Codes of the House of Representatives met pursuant to adjournment.

On roll-call, the following members were present :

Comings,	Worthington,
Painter,	Denman,
Guerin,	Hypes,
Price,	Willis,
Cole,	Gear,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Chapman,	Maag,
Allen,	Huffman,
Silberberg,	Sharp.

The minutes of the previous meeting were read by the secretary, and approved.

The Chairman: Mr. Bracken introduced a bill in the House relating to the primary election law; but he states that as the tendency seems to be to have no other than code legislation, he will ask the privilege of withdrawing that bill, and offering an amendment here to the code, and he asks that the committee consider the amendment. I will refer this to the Committee on Legislation and Judiciary. Mr. Painter is chairman of that committee.

The amendment offered by Mr. Bracken is as follows:

Primary elections held to nominate candidates or to elect delegates to constitute a convention for the purpose of nominating candidates, shall be held on the first Monday in March. At all such elections the polls-

shall be open between the hours of 8 A. M. and 8 o'clock P. M. Election boards shall, with respect to primary elections, have all the powers and perform all the duties granted and imposed by the laws governing general and municipal elections, including furnishing materials and supplies, printing and distributing ballots, providing voting places, protecting electors; guarding the secrecy of the ballot, and making rules and regulations, not inconsistent with law, for the guidance of election officers; and all statutory provisions relating to general elections, so far as applicable, shall apply to and govern primary elections. Separate tickets shall be provided for each political party entitled to participate in such primary, and shall contain the names of all persons whose names have been duly presented to the proper board of elections and not duly withdrawn, alphabetically arranged and shall bear the official signatures of the members of the board of elections; and such tickets shall conform, as nearly as practicable, to the form provided in the act of April 18, 1892, (O. L., 432) commonly known as the "Australian Ballot Law," and the acts amendatory thereof and supplementary thereto, except that no device or circle shall be used at the head of said tickets. All candidates' names shall be printed in one column, with a space of at least one-fifth of an inch between each name. The ticket shall not be more than three inches wide, including bars and spaces before the names of the candidates, and shall be so printed as to give the elector a clear opportunity to designate by a cross mark in a blank space on the left, and before the name of each candidate, his choice of particular candidates; on the back shall be printed the words, "Official Ballot," and "Primary Election," and the name of the political party for which such ballot is printed.

Primary elections to nominate candidates to be voted for at any special elections shall be held in accordance with the provisions of this act, except that such primary elections shall be held on the second Thursday preceding the day of holding the special election.

On each day designated in this act for holding primary elections a full board of election officers shall, by the appropriate board of elections, be assigned to duty at each polling place, and such election officers shall jointly conduct the elections as to all parties. The regular judges and clerks of election shall be the judges and clerks of primary elections, and shall be charged with the same powers and duties, and shall be subject to the same penalties as is provided by law for the conduct of general elections. There shall be a separate ballot box at each voting place, provided for each party entitled to participate in such election,

and the ticket of each voter shall be placed in the ballot box designated for the party to which he belongs; each ballot box shall be plainly marked with the name of the political party whose ballots are to be placed therein, by letters printed thereon or by a card attached thereto, or both, so that each voter may witness the deposit of his ballot. At such elections only legally qualified electors may vote, and electors shall vote only in the election precincts where they reside, and only the ticket of the party with which such elector shall have previously openly affiliated, and it shall be a cause of challenge that an elector has not previously openly affiliated with the political party, the ticket of which he is desirous of voting. All provisions of law relating to challenging voters at general elections shall, in so far as applicable, apply to primary elections, except that each party shall, by certificate of its controlling committee, be entitled to have two challengers and two witnesses of the count, who shall be admitted within the polling place.

Candidates for all municipal offices shall be nominated either by direct vote of the electors at primary elections or by conventions, the delegates to which have been chosen at primary elections, and persons not so nominated shall not be considered candidates and their names shall not be printed upon the official ballot.

The controlling committee in any municipality representing any voluntary political party, which at the next preceding general election polled at least one per centum of the entire vote cast in the state may, by the adoption of a resolution to that effect, by a majority vote of all its members, decide whether at the ensuing primary election the candidates of such party in such municipality or any civil division thereof in which an officer or officers are to be elected at the ensuing election, shall be nominated by convention or by direct vote, and a copy of such resolution shall be transmitted, properly certified and signed by a majority of such committee to the proper board of elections; such certificate shall be filed with such board of elections not less than thirty days before the days hereinafter provided for holding primary elections, and if the committee of any such political party fails or neglects to file such certificate, nominations as to such party shall be made by direct vote. If the committee of any such party shall decide that the candidates of such party in any municipality or any civil division therein shall be nominated by delegate convention, it shall in such resolution fix the basis of representation in such convention and designate the number of delegates to be elected and shall state the election districts in which such delegates are

to be elected, and such delegates shall be elected by direct vote at such ensuing primary election. Such controlling committee may provide that such delegates shall be elected at large by a plurality of the votes cast in the civil division in which officers are to be elected at the ensuing election or by election districts therein, and such election districts may consist of a precinct, or ward, if such precinct or ward has a sufficient number of votes to entitle it to a representation. If, however, the political party represented by such controlling committee did not poll a sufficient number of votes in a precinct, or ward at the previous November election to entitle it to one or more delegates in such convention then such committee shall annex such precinct or ward to such adjoining precincts or wards, the combined vote of which when so annexed, under the basis of representation fixed by such committee will entitle the district so formed to elect one or more delegates to such convention. The delegates so chosen shall meet in convention at such time and place as said committee may designate by notice published in some newspaper of general circulation in such municipality not less than ten days before such primary election; but such convention shall not convene later than the third day after the primary election at which the delegates to such convention have been chosen; and delegates to conventions not chosen in accordance with the provisions of this act shall not be qualified to sit or participate in such convention.

The controlling committee of any party may, in the same manner as is provided in the last preceding section, for the election of delegates to nominating conventions, provide for the election of members of controlling or other committees and request that the same be chosen at any primary election, in which event, and not otherwise, they shall be so chosen.

It shall be the duty of the boards of elections to cause to be printed upon the official ballots the names of all persons whose names have been properly presented to the board at least fifteen days before the days designated in this act for holding the primary election by petition, which petition shall set forth the name of the person, the office for which he is to be voted, and signed by at least ten electors, who have previously openly affiliated with the political party upon whose ticket it is desired to place such person's name, of the election district within which a candidate for such office is to be elected; provided, that any person whose name has been so presented as a candidate, may, by written notice, presented to the proper board of elections, at least ten days before the day upon which the primary election is to be held, withdraw his name, in

which event the name of such person shall not be printed upon the official ballot. Any vacancies, occurring at the expiration of the time for filing names with any board of elections, may be filed by the controlling committee of the proper party, which may file the names for such vacancy not later than ten days preceding the day of holding the primary election.

The names of candidates for delegates to constitute a convention to nominate candidates to be voted for, and the names of candidates for committeemen of any party, shall in the same way be printed upon the official ballot when presented to the board of elections as herein provided for presenting names of candidates for nominations.

At the close of the polls the judges and clerks shall proceed without delay to canvass the vote, sign and seal the same, and make return thereof to the board of elections. If there are any tickets cast and counted or left uncounted concerning the legality of which there is any doubt or difference of opinion in the minds of the judges of election, they shall be sealed up and marked "disputed ballots," and returned to the board of elections, with a statement as to whether they have or have not been counted, and if counted what part and for whom; such ballots shall be preserved by the board for such judicial or other investigation as may be ordered by the controlling committee of the party for whom they were voted. If the election has not been held to choose delegates to a convention, the judges and clerks of the election shall make return to the board of elections of the number of votes cast for such candidates, and the board of elections shall canvass the returns and declare the result, and shall make and certify duplicate lists of delegates of each party who have been chosen. One list shall be filed and kept in the office of the board for one year, and the other shall be delivered to the temporary chairman of the convention upon its assembling as soon as may be chosen, and it shall be the official list of delegates entitled to sit in said convention. In like manner, if members of a controlling committee have been chosen, the board of elections shall make duplicate lists of such elected committeemen for each party. One list shall be filed and kept in the office of the board for one year, and the other shall be delivered to the chairman of the committee, and it shall be the official roll of the committee. If the election has been held to make nominations of candidates to be voted for at the ensuing election the board of elections shall officially publish the names of the persons nominated, and such names shall be placed upon the official ballot as the candidates of the party nominating them. In case of a tie vote the candidates having the high-

est and equal votes shall, in presence of the board of elections, determine the result by lot. If they fail to do so, the board shall decide the matter in the same manner. In case of a vacancy or vacancies in the list of nominations occurring by death or otherwise, after the result has been declared, such vacancy or vacancies shall be filled by the properly constituted controlling committee of the party in which such vacancy or vacancies may occur, and the name or names of the candidates, delegates or committeemen as the case may be, selected by such committee, shall be reported to the proper board of elections, and such board shall cause such name or names to be placed on the official ballot, lists or rolls.

In cities in which registration of voters is required the boards of election shall provide for the registration of electors who are not duly registered, or who have removed from the precinct in which they are registered, and who must obtain and present removal certificates as provided for in general elections. Such registration shall take place in the various precincts between such hours as may be fixed by such board, and on such day or days as it may determine, which shall be within seven days, preceding the day of holding primary election. No elector shall be permitted to vote at any primary election in any such city who is not duly registered, and all provisions of law relating to registration of voters shall apply to primary election, and the boards of elections shall provide columns in the registration books in which the names of all electors voting at primary elections shall be checked as provided in general elections.

For their services at such elections, judges, clerks and registrars shall receive the same compensation as is provided by law for such officers at general elections. All expenses of any primary election held for the purpose of nominating candidates, or for the purpose of electing delegates to constitute a convention for the nomination of candidates for such purpose, including cost of supplies for election precincts and compensation of the judges and clerks of election, shall be paid in the manner now provided by law for the payment of the expenses of the general elections.

All provisions and requirements of law to preserve and protect the purity of elections and penalties for violation of such laws, shall apply to and be enforced as to all elections held under this act.

Whoever votes or attempts to vote at any primary election, knowing that he is a disqualified elector, or votes under an assumed or false name,

or votes more than once, shall be imprisoned in the penitentiary not less than one year or more than three years. Whoever personates another for the purpose of voting or attempts to vote by claiming or assuming the name or place of any elector shall be imprisoned in the penitentiary not less than one or more than five years. Whoever with intent to defraud or deceive, writes or signs the name of another person to any document, petition or book, authorized or required by this act, shall be guilty of forgery and shall be imprisoned in the penitentiary not less than one year nor more than three years.

Nothing in this act shall be construed to repeal any provisions of law relating to the nomination of candidates by nomination papers as provided for in sections 2966-20, 2966-21, 2966-22, 2966-23 of the Revised Statutes.

The Chairman of the Committee reported that there were no representatives of city and village councils and municipal leagues who desired to appear before the Committee at this session; and that on that account there was no special program for the morning.

On motion of Mr. Thomas, seconded by Mr. Silberberg, Mr. Guerin, of Erie county, was requested to address the Committee in reference to the Code bill introduced by him as House Bill No. 14.

The motion was carried and Mr. Guerin addressed the Committee as follows:

Mr. Guerin: Mr. Chairman and Gentlemen: House Bill No. 14 is almost identically the same as House Bill No. 5, up to section 37, relating to the powers of council. I change some of the general powers of council; I have stricken out some things that, in my opinion, are unconstitutional, principally, where it provides for the condemnation of the property of a man, without compensation, and I have enlarged somewhat on the power of council to levy and provide for the maintenance—really, a rental is what it amounts to, by libraries owned by private corporations.—I want to say in that connection, that I was not here yesterday, but I understand that there was a special committee appointed for hospitals. We have in our city a private hospital which is maintained for the benefit of the people of the city; the State has nothing to do with it, and I want to introduce an amendment to whatever Code is adopted, making the same provisions that I have made for private hospitals; that where in any municipality, there exists a free hospital maintained for the benefit, and independent of, any municipality, which is controlled by either pri-

vate corporation or an association of persons, that the city council may levy a tax of not to exceed one mill for the use of the hospital.

Mr. Cole: Did the city assist in the construction of your hospital?

Mr. Guerin: No, sir; but they assist in keeping it up. The theory on which that and the library business is to be put in here,—that it is a rental; that is, that the city rents the use of that hospital for the benefit of the city, and that the city be allowed the discretion of continuing to maintain it.

Now, on page 37, section 86, I have a provision for the placing of executive power and authority of cities, and it is exactly the same as the Governor's, excepting that I have single heads of departments.

Section 87. "The mayor shall be elected for a term of three years, and shall serve until his successor is elected and qualified. He shall be an elector of the corporation, and a resident thereof for at least five years next preceding his election." That is the same as the Governor's Code.

Section 88. As to the president of the city council, is the same as the Governor's Code.

Section 89 is the same as the Governor's Code, and so is section 90.

In section 91, I have divided the government of cities into four departments, the department of accounts, the department of law, the department of public safety and the department of public improvements.

After that, follows the general powers of the mayor and the administration of the executive offices of the city.

Now, the principle of this bill is the same as that of Mr. Comings' bill No. 1056, that was introduced a year ago, that the responsibility for city government should be centralized, placed in one person, and that person should be the mayor of the city.

I have provided in this bill, that the director of accounts is to be elected, and the director of law appointed; but I believe, after hearing the argument and considering the matter, that the director of law should be elected; so that it would leave in my bill but two appointive heads of departments, the director of public safety and the director of public improvements.

Section 92 provides: "The mayor, director of each department and the treasurer, shall have power to appoint all such deputies, officers, clerks and employes for their respective departments, as shall have been provided by ordinance of council, subject however, to such rules and limitations as are prescribed in this act, and said directors and said treasurer shall have the exclusive right to remove or suspend any of such deputies,

officers, clerks and employes, subject to the limitations in this act prescribed." In other words that the mayor, while responsible for the conduct of the city government, has no power to remove a single employe in any department; but I do provide that the mayor may remove all persons appointed by him, and may remove the heads of departments either with, or without cause, but where the head of a department is removed, the reason for the removal shall be stated to council, and be entered on the minutes, although council has nothing to do with the appointment of any officers outside of the officers of its own body, and nothing to do with removals.

Judge Thomas: In section 97, it says, "It shall be the duty of the mayor and each of the heads of the several departments, and the treasurer, to attend the meetings of council, when specifically requested by council so to do, and to answer at such time such questions relative to the affairs of the city under his management, as may be put to him by any member of council."—Is it your intention for them to take part in the proceedings of council?

Mr. Guerin: No, sir. Just exactly as that reads; it would be the duty of the mayor to attend the meetings of council, when specifically requested by council to do so, and to answer such questions relative to city affairs under his management, as may be asked him by any member of the council.

Judge Thomas: Would you object to adding to that the clause, "But that neither the mayor nor any of the heads of departments shall have the right to speak or take part in the proceedings?"

Mr. Guerin: Take part in the proceedings they cannot; but I have no objection to such an amendment, because that is exactly what is intended, that they shall not take any part whatsoever in the deliberations or proceedings of the council, except when specifically requested so to do.

Mr. Stage: The suggestion was made here the other day, that they should be restricted simply to the answering of questions.

Mr. Guerin: I think that is all right, and I will show you further on how that would work exactly, by the plan I have formulated here about the reports to the city council, relative to the affairs of the city, that are made through the mayor. I believe myself, that it would be a good plan to have them simply confined to the answering of questions, and if they have any recommendations to make, let them be made through the mayor; he is the man who has the responsibility, he is the responsible

head of the city government, and he is supposed to be informed relative to the affairs in each department, during his term of office.

Mr. Worthington: How would that apply to villages? Why not apply the same rule to villages as to cities? Nearly every one has advocated divorcing the executive from the legislative function. In villages, according to all the codes I see, the mayor is to be the presiding officer, and also has a right to vote in case of a tie, whether it involves money, or not. Why not let the city council organize by electing one of its own members as the presiding officer, or president?

Mr. Guerin: I see no objection; that is all right, if you want another officer.

Mr. Worthington: It is not necessary to have another officer,—I say to elect one of their own members.

Mr. Guerin: That is all right.

Mr. Worthington: Do you not think the mayor of a village has greater influence in council, than a city mayor has?

Mr. Guerin: I don't think there is any doubt about that. My code provides exactly the same as the Governor's code, and the only change I have made, was to provide that the trustees of public affairs, as well as the members of the city council, should receive no compensation.

Mr. Worthington: Then you provide that the mayor shall have a vote in the village council?

Mr. Guerin: Yes.

Mr. Worthington: And yet you claim he ought not to have that power in cities; why do you make the difference?

Mr. Guerin: Well, I don't know as it makes very much difference. I do not think, in the government of villages, there is as much importance attached to the question, as in a city.

Mr. Worthington: Isn't the expenditure of money, of, we will say, \$25,000, just as important to the people in a village, as the expenditure of \$100,000, or \$50,000 would be to the people in a city? Isn't the rate of taxation just as high, just as much of a hardship?

Mr. Guerin: Mr. Worthington, I do not see any objection to cutting the mayor out of all participation in the proceedings of council in villages, and allowing council to elect its own president if it desires to do that.

Mr. Cole: I understand, Mr. Worthington, you do not insist upon a strict separation, that you are in favor of permitting council to do the executive work in the city—that it is just another one of the mingling of the three functions of government?

Mr. Worthington: No; the only thing, we have agreed to have council appoint the board of health—but I do not object to the board of trustees.

Mr. Guerin: Section 93 provides that it shall be the duty of the mayor, directors of each department, and of the officers provided for in this act, to remove, dismiss or suspend any employe in his department for misconduct in office, incompetence, gross neglect of duty, gross immorality, habitual drunkenness, or failure to faithfully perform the duties for which he is employed or appointed. In the event that such director, or officer shall fail to perform the duty hereinbefore set forth, it shall be the duty of the mayor to forthwith remove such director or officer, if appointed by him, and the failure of such director or officer to observe and perform the provisions of this section shall be deemed misconduct in office, and sufficient cause for the removal of such director, mayor or officer. The mayor may, at his discretion, remove any director or other officer or employe appointed by him. The order of removal shall be in writing, shall state the reason therefor, and shall be entered on the record of his office, and a copy thereof shall be forthwith transmitted to council.

Now, my idea about that, is simply this: In case of the mayor appointing the heads of these departments, they, of course, being appointed for three years, it really means they remain during good behavior; but every citizen in the municipality has a right, every day in the week, to see that the affairs of his municipality are properly attended to and administered, or if there is non-feasance, or misfeasance or malfeasance in office on the part of any official, or any employe, every man in the city has a right to insist, if he so desires, that that man shall be removed from office. In other words, if the people elect the heads of departments, they go in for three years.—I think the Governor's Code provides for impeachment. I don't think there is a case on record in the State of Ohio, where an impeachment proceeding has ever been successful in a matter of that character; it is impracticable; but if a man is in office to stay just as long as he behaves himself, that is, for the term for which he is appointed, and he knows that he will go unless he does behave himself, you are bound to have better government than if you elect a man for three years, and he says, "I shall probably not be elected again, anyhow; I will do just as I please, regardless of how the people of the community may view the matter." I am told a good many times, of how the county commissioners in a certain county have held up the directors of a railway. They are in office, and in authority; they would not let this railway cross the

river into their county, and as a result the railway was built around through another city, and that community lost one of the most valuable feeders it could have had for its business. The press and the people were unanimous that these commissioners should be put out of office, but they remained in office until their terms were finished. Each man of those commissioners now says,—“It is all right, those people ought to have been allowed to come across the river, but it wasn’t my fault, it was the other man’s fault.” I say it is a great mistake for the people to put a head of a department in such a position that it is impossible to get him out of office, if he proves to be not the proper man.

Mr. Silberberg: What provisions have you made for the removal of the mayor?

Mr. Guerin: I was coming to that a little further on. Section 100 provides,—“In case of misconduct in office, incompetence, gross neglect of duty, gross immorality or habitual drunkenness of any mayor, the governor of the State shall remove him from office, upon notice, and after affording to the said mayor a full and fair opportunity to be heard in his defense. The proceedings for his removal shall be commenced by the governor putting on file in his office, a written statement of the alleged causes for the mayor’s removal, and he shall cause a copy of said statement to be served upon the mayor not less than ten days before the hearing of the matter. The proceedings had by the governor upon such removal shall be public, and a full, detailed statement of the reasons of such removal shall be filed by the governor in the office of the secretary of state, and shall be made a matter of public record therein. The decision of the governor, when so filed, with the reasons therefor, shall be final, and pending such investigation by the governor, he may suspend the mayor for a period of thirty days.”

Now, that provision of law is copied from the statute of New York; that has been in force there a number of years, and I am informed, by competent authority, that since the statute has been passed, there have been three mayors in New York removed from office. You will all remember when President Roosevelt was governor of New York, that he threatened to remove the mayor of New York City, and how it resulted in the mayor of the city making that an impossibility by turning around and obeying the law which he had openly threatened to disobey before that time.

I do not believe that power would be exercised very frequently, but it certainly is in the interest of the people of a community, and especially.

if we adopt such a plan as I am here advocating. The mayor must perform his duty, under this, and must see that the laws are enforced, or any citizen in the community has a right to go before the governor and prefer charges, and upon a public, open, fair hearing of the matter, if the mayor is found to have disregarded his oath of office, the governor removes him from office. Now, the governor has no appointive power; he does not appoint the successor of the mayor, but the bill provides that the president of the city council, who has been elected by the people, shall succeed to the office of mayor, and have all the powers and privileges which are granted to the mayor.

Now, we have been discussing somewhat, the question of formulating governments that shall not be burdensome upon the smaller communities. With single heads of departments, a measure of that character will not be burdensome to any small city in this state, but I intend to offer an amendment which shall provide that the director of accounts may also be the clerk of the city council. I have a provision here that in case of absence, or disability, or refusal to act, on the part of the police judge, the mayor shall act as police judge.

The constitution provides for an elective judge and clerk in every judicial district, so that it will undoubtedly be necessary to elect a police judge and also, a police clerk; but there is no reason why the director of accounts cannot act as clerk of the city council, and also be elected and hold the office of police clerk.

I was talking with General Brown of Zanesville; he says they want a police court. I do not believe that the people of Sandusky will ever make a provision for the payment of a dollar of salary to a police judge; they do not need him and do not want him. The result will be, that if anyone runs for that office and is elected police judge, he will refuse to act, and we have therefore provided that the mayor may act, or may designate a suitable person, a lawyer, to act as police judge, in the absence or disability or refusal to act of the judge elected by the people.

Mr. Stage: I want to ask Mr. Guerin if he thinks it would be feasible to draw a line of demarkation as to where it would be necessary to have a police judge?

Mr. Guerin: I think it would; I see no reason why we could not.

Mr. Stage: It will certainly be constitutional?

Mr. Guerin: I don't think there is any doubt.

Mr. Stage: Place the limit at 20,000 or 30,000?

Mr. Price: I think there is no disagreement anywhere but what the police judge is independent of the organization of the municipal corporation, proper, and is controlled by special section of the constitution?

Mr. Guerin: Yes.

Mr. Price: If you will take Article 2, Section 20 of the Constitution, I think you will find that the legislature, in creating that office, must adopt a rule of compensation, or fix the salary itself?

Mr. Guerin: I think there is some question about it, myself.

Mr. Price: So that if you adopt a rule of compensation, either by fees to him.

Mr. Guerin: The president of council could act, if the legislature fixed a salary, and the constitution provides he can act; he is elected by the people. The idea is, that the bill prescribes a limitation to his duty; he shall also, during the absence or disability of the mayor, perform the duties of police judge, and that law is in force when he is elected; he is elected for that purpose, just as much as if he ran independently.

Mr. Price: Then he acts as the police judge, not by virtue of being mayor but by virtue of being president of council?

Mr. Guerin: Yes.

Mr. Price: I believe we will have to establish a compensation, under that section.

Mr. Guerin: I think it would be a great deal better to adopt the plan suggested by Mr. Stage, that in cities having a certain number, there shall be elected a police judge. I don't know of a small city in the State that wants this system of judiciary that is provided for, but the election of a police judge and clerk can be provided and create no burden.

I provide in section 99, that during the temporary absence or disability of the mayor, the president of council shall act as mayor; he does not forfeit his office, unless he succeeds permanently to the office of mayor.

Section 96 differs from the Governor's Code in this:—The Governor's Code provides that the head of each department or each different board, shall, at a certain time, make an estimate or statement of the money required for the next succeeding year, to the director of accounts; the director of accounts has the authority to examine this statement, to correct it, to cut out or cut down any item he thinks should go out. In other words, to revise that estimate according to his own notion as to the needs of each department for the next year, and then the director of accounts himself sends that to council, and council has no power to raise the total of that budget.—I think that is altogether wrong. A man could

be elected director of accounts, or auditor, and would probably be elected for the reason that he is an expert bookkeeper, that he understood that class of business; he is busy during the year in his own department, he knows nothing about the department of public safety, or the legal department, or any other department other than his own. I have provided in this, that the mayor shall call together the heads of different departments at least once a month, to talk over the affairs relating to the condition of the city, and that he can compel the attendance of the heads of departments at these meetings. We make him responsible for the whole of the city government. Now, through these meetings, and through his responsibility here, he is obliged to keep in touch with every single department; he knows the condition of the city from one end to the other; he knows what expenditures of money are to be made, and how. The head of the department is not alone responsible, but the mayor is also responsible. Now, when the time comes for making up the budget to council, the head of each department sends his estimate to the mayor, and the mayor knows enough regarding the condition of the city, both physical and financial, to make a revision himself; it is his business to know the condition of the city, and he is responsible. Then let him make up from those budgets, or reports, his budget to council. It seems to me that is the only place for that power.

Under House Bill No. 5, the auditor is the biggest man in the city government. There is no question about that,—they all have to go to him for whatever they want. He has the right to hold them up, to say "You can have it, or you cannot have it," and as a matter of fact, he does not know anything about the needs of the different departments; he is never in consultation with them, and as I say, nine times out of ten, he is not a practical business man,—he will be a bookkeeper.

The general idea of these general provisions, as I say, is simply to fix the responsibility upon the mayor of the city; it makes that office an attractive office, it raises the standard of men who seek that office, because the voters will not put in there a man who is not competent to manage their business affairs; he makes, not simply the appointments under this bill, but he has the general supervision of all of these other officers; is responsible; the business of the city and the welfare of the city all come under the two departments of public safety and public service. The rest of it is simply the technical details of carrying out the acts of these other departments. Now, I provide that the mayor may appoint competent disinterested persons, not exceeding three in number, to ex-

amine, without notice, the affairs of any department, officer or employe, whether appointed by him or not. If the mayor has reason to believe that the affairs of any department are not properly managed, or that the officials are corrupt, he can immediately appoint three disinterested persons, and without notice to that department, send them in there, and this gives them the power to take charge of the office and check it out. Now, with that additional power lodged in the mayor, which means holding him responsible for the officers, and that he is supposed to look after affairs generally,—the office is one that any man, in any city, would be glad to get, and it is an office that the people will not fill, except by putting in the best man that can be gotten.

The department of public accounts is practically the same as provided in House Bill No. 5. The department of law is made a department in which it is provided that the director of law shall be appointed, but as I say, I believe now that he ought to be elected.

The department of public safety, section 111, I put that under one director of public safety, with practically the same power that is given the board of public safety by House Bill No. 5, and give him the power of making all appointments in his department, but I limit the jurisdiction of the director of public safety to the business to be transacted by that department, and the power of final removal of the employes in his department.

Mr. Silberberg: Is he to be elected?

Mr. Guerin: No, sir; appointed by the mayor.

Mr. Silberberg: You said here that you wanted to give the entire power to the mayor and to the director of public safety. Do you think that is proper, to place the power in the hands of a man that is to be appointed? Shouldn't he be elected?

Mr. Guerin: No, I don't think so. If you elect him, he is in there for three years, whether he is a good man or a bad man; whether he fulfills the obligations of his office or not, he is there to stay, and that is not what the people of the city want; they want good government; they want you to give them a mayor that will compel the officers of the municipality to do their duty and enforce the law, and just as soon as you put it within the power of these people to hold office without fear of removal, you take away the safeguard that the people of this State demand.

Mr. Painter: Do you have civil service apply to this department?

Mr. Guerin: I am just coming to that. The department is divided into the fire and the police department. I feel that both the fire and the

police department should be under civil service, or the merit system; that the director of public safety may appoint only those persons who, from the classified list certified to him by the board of civil service, are eligible. I will come to that a little later on.—He makes the appointments, but they are limited to this list that comes to him from the civil service commission. I provide that there shall be a chief of the fire department and a chief of the police department, that all promotions in those two departments shall be made from the next grade below, for merit alone and qualification to fill the office to which the man is to be advanced, except that the chief of police and the chief of the fire department need not be promoted from the grade next below, but that they must pass a civil service commission examination before they can be appointed to either one of these offices.

That is for this reason: We will take it in the little town of Sandusky; we will say we do not have to-day in the fire department there, a person who is suitable to act as the chief of the fire department. We know of a good man in Columbus whom we can get to fill the office, better than anyone we have in Sandusky. That is left open so that we can go to Columbus and get that man; but before he can be appointed, he must pass this examination to show that he is qualified, and then he holds the position under the civil service rules.

Mr. Chapman: Does your bill make any provision for the firemen and policeman that are serving now?

Mr. Guerin: It says that they are not to be removed except for cause; of course, that applies equally well to a man after he gets in office under the civil service rules; but I think if we start in with the merit system, I should take every man who is in office to-day, and whose department is under the merit system, and make him take a competitive examination. The mayor of Sandusky recently said to me, "If you are going to place the police and fire departments under the civil service, I don't want you to leave a man I have got in office here, for life; we have got a lot of dead-wood timber, and if you are going to start in on a system of that kind, and leave these men in there for life, or during good behavior, let's get better officers and make these men now in office take a competitive examination, and if they pass, let them go in; if they fail, let them go out." That is from the man who makes the appointments himself. I simply quote that to show that he has the proper appreciation of the system. When you get right down to the city officials, even though he has the power to appoint, and to build a political machine, if he chooses,

yet, when you talk about good government, and getting the best men to serve, he has the same idea that every one else has; he wants good government, and I believe that the merit system will give us a better class of men than are in office to-day.

Now, in section 113, it is provided that the mayor shall be chief conservator of the peace within the limits of the corporation. In case of riot, or any like emergency, the mayor shall have power, two-thirds of the members of council consenting thereto, to appoint additional patrolmen and officers for temporary service, who are not selected from the classified list of such department. The director of public safety shall make all contracts with reference to the management of the police and fire departments subject to the restrictions hereinafter imposed.

Now, I give the chief of police, and of the fire department, the fullest right to manage and control, under the rules of the department, the subordinate members of their departments, with the sole right to suspend any member of that department, the chief being the head of his department. He will have the sole right to suspend for misconduct in office, and all these things heretofore stated, and also, for failure to abide the rule or the orders given by the chief, or other officer of that department, who has the power to make the order. The purpose of that is simply this: The chief is held responsible for the performance of the duties devolving upon the members of his department. I want to make him responsible for the conduct of his men, not the director; I don't want him to be able to say, "The reason I took Jim Jones off this tough beat, and put somebody else on there, was because the head of my department said I was to do it,"—but I want him to be the head in the management and control of his men. I put that power in the head of that department, who is under civil service, who has a duty to perform, and if he does not perform his duty, he loses his position; but do not let the political head of the city have anything to do with the enforcing of the law, or the service of the police or fire departments. When a suspension is made, the chief immediately within five days, makes a written statement of the cause of suspension, sends that to the head of the department, who gives the man a hearing, and if he finds he is guilty, he renders his judgment and discharges that man from the service, and his judgment is final, but I do not give the chief the power to discharge men, I provide that heads of departments may only remove for cause. Of course, when trying a case before the head of a department, they are simply limited to the cause for which that man was suspended by the chief.

Then comes the department of public improvement. That is practically the same as in the Governor's Code. I don't care to argue the question at length at this time, but I want to say to you, that the Post-office department of the United States, which is the largest business enterprise in the world, larger than the Standard Oil Company, or the gigantic Steel Trust,—is under a single head; the affairs of every large corporation in this country, where the duties devolved upon the head of the department, are a thousandfold more than are prescribed in this, or the Governor's Code, for the head of the department of public safety or service,—are performed by a single head, single individuals. We do not expect a man to go out and personally supervise all public work; we do not expect the general manager of a great railway company to go out on the section and tell the men how to place the ties, but we expect them to have men under them capable of doing these things, and we expect that one man, who is responsible, to see to it that his subordinates perform their duties, and we provide, therefore, for one man who is responsible, and who, if he does not perform his duties properly, can be removed by the mayor. We expect that man to keep in touch with every single branch of his department, and we expect him to put into that department men who have knowledge of the business for which they are employed; we expect him to select competent subordinates, and the mayor, being interested in the expenditure of money, and in the transaction of business in that department, the mayor will be in constant consultation with the director of public service, because that is the business end of the city, that is where the money is spent; the mayor is responsible, as well as the head of that department, and the mayor will keep himself advised as to what that director is doing, and if that director does not do his duty, the mayor will see that he goes out of the office. You have, practically, for that department, a board of two, the mayor and the head of the department, but one of them has the authority in one sense, the responsibility, in the other sense—responsibility, so far that you can say to the head of the department, "If you don't do your duty properly, we will have the mayor of the city remove you from office, and if the mayor doesn't do his duty, the Governor of the State will remove him from office." Now, we have a board of two, as I say, and there will be constant consultation between them, because they are both responsible for that department. It is a great deal better, it seems to me, to have one man, where you can fix responsibility, where it will not be a case like the county commissioners of which I spoke, where each one gets behind the other's

coattails; but you have one person, and when he performs an act, we know where to go. I say to you that if you put in there a board of three, and provide any salary at all for the members of that board, it will be a burdensome and unnecessary expense upon the inhabitants of the smaller municipalities in the state; but if you pay your director of public service a fair salary, you will get a good man; if you do not pay anything in that department, you will get just what you expect to get in a city for nothing.

Mr. Gear: I see in section 117, the directors of public safety shall have power to make all contracts and expenditures of money for acquiring lands for the erection or repair of station houses, etc., etc., etc.,—provided, that no obligation involving an expenditure of more than \$500 shall be created, except upon the approval of the city council.—Now, under that, he could make as many contracts as he wanted to, for \$499, without having the consent of council.

Mr. Guerin: Under this system, I don't think it makes much difference—we talked about that point in the committee meeting.—He might divide up his contract, but if you elected a man, he could do that, unless you had an express provision that he could not; but that certainly would be misconduct in office, it would be disobeying the spirit of the law, if the man should do as you suggest, and would be cause for removal. We have got to trust somewhat to the good faith of our officials; you cannot expect that every single act they shall do, shall be defined by law,—you have to trust to their good faith and honesty.

Mr. Silberberg: Why don't you provide against that in your code? That is an important point.

Mr. Guerin: That is all right. I think if a man is going to split up contracts and place them in small amounts, it is better to have that amended.

Mr. Painter: If the gentleman from Hamilton will remember, the speakers before this committee, having inveighed bitterly against the idea of the council having to pass, by ordinance, on every expenditure of public money; they figured it that it would take ten weeks to pass an ordinance to get an appropriation to buy any supplies in case of emergency, or to pass a pay-roll.

Mr. Guerin: As I say, you have got to trust something to the honesty of men.—I shall only take a few minutes more of the Committee's time.

Section 136 provides that the Governor shall appoint four persons to be merit system commissioners. I prescribe in this act, the powers and duties of those commissioners. It is to be a bi-partisan commission, appointed by the Governor, one man appointed each year, and to make a long story short, the commission is to act exactly as the National Commission acts in the conduct of appointments, and the rules and regulations of the Post Office Department of the National Government. They have a right to prescribe such rules and regulations concerning the nature or character of the applicant as they desire they are required not only to give them a test upon their educational qualifications, but also upon the qualifications that are required for the performance of the duties for which the man is to be appointed.

They receive from the heads of their departments in each city in the state, a classified list, stating the number of men to be employed in a certain department, or the average number, the character of the work to be performed, and all such other information as the head of the department may desire to give, or as the commission may desire to receive. The examination is to be conducted solely with a view to getting into office men well fitted for the positions to which they are appointed. I provide that that shall apply to police force and health departments; that the city council of any city may extend the provisions of the merit system to any other department, or to all the departments of city government. If the city council should not do that, then ten per cent. of the electors may petition council for an election, and the question shall then be submitted to the electors of the municipality at the next succeeding election (municipal) and that a majority vote shall carry. There is the further provision that where civil service has obtained in any department, it shall not, by any act of the municipality be prohibited, but it stays right there, unless the legislature abolishes it.

Now, it seems to me that a bill of that character gives a greater amount of home rule to municipalities than House Bill No. 5. The officers appointed and the officers elected, all of them hold office simply so long as they perform the duties, and so long as they obey the laws of the State. Every man in the municipality, every day in the year and every year during the term of office, has a right to demand, and he has the means to compel, the observance of the laws of the State by the people who are put in office for that purpose. It is a system where directors can hold more than one office, in a small city; the director of

public safety may also be the director of public service, and you can make a combination of the heads of these departments, so that the form of government will not be burdensome to small cities; but the same form of government, gentlemen, will be just as efficient for the city of Cincinnati and for the city of Cleveland as it will be for the smaller cities or places.

There has been a great deal of talk about political machines. I want to say to you, gentlemen, that if Tom Johnson can elect himself mayor of Cleveland, he will elect every member of every board provided for in any law you can pass. There are bound to be politicians and there are bound to be political machines in every municipality, but I say to you, gentlemen, that with a bill such as this, you will be more able to do away with corruption in politics, with the building up of a political machine, than by any bill that has been suggested here yet; for as soon as a man starts to build a political machine the people of this city can say, "We will put civil service in that department," or they will say that that man is not properly attending to the duties of his office and he shall be removed,—and they have a right to do it, for this bill provides that if he fails to perform the duties of his office in a proper manner, he shall be put out of the office.

Now, I say to you that that is home rule; that is giving the people of a municipality an opportunity to keep in touch with their city government. They elect a man and he goes in office for three years; he is there to stay until his time is out, until his term has expired; but here, they have a right to remove him for cause; he can only hold office so long as he performs the duties of that office properly. Those who do not like the merit system, those who object to that system, I am sure, have never made a study of municipal government. You will get better men, as we know by experience, in the Federal plan of government, just as, in the National plan of government, under the postoffice civil service, you get better men in that department—you get better service in that department than you get in almost any other department of the National government. I say that the police, the fire and the health departments relate to the welfare of the people so closely, both physically and morally, that those departments should be absolutely free from political contamination. What every man in the State wants, whatever his party, is good government; we want the law enforced; we don't want politics to enter into that, that is a matter relating to our own welfare and the welfare of our families; we want the police to

do its duty; we want the fire department to be efficient, and we don't want our health department run by any political bosses; we want these officers to be competent men, because all this relates to the physical welfare of our selves and our families and our neighbors in the community.

Now, under a plan of this kind, if you like to have good government, you will get it; but if you want to elect Tom Johnson, or some one who will build up a political machine, I say the best way to do is to elect the heads of departments, or boards; but you will not get good government for the reasons I have stated, and I don't believe that the board plan will hurt any politician in this State, who is in control of any city; if he can elect himself mayor of the city, he will elect the members of every board you can provide, and when elected, he is not responsible for what they do, and no citizen will have a right to say, "You get out of office." The office holder can say, "I will stay in office until my term is out, and I will do just as I please."

What I say the legislature ought to do, is to rise to this occasion and make a Code, which, if we shall not have constitutional amendment and have to make other codes, can stand for fifty years; let us do our duty as members of this General Assembly, and not try to put in a government that shall be simply a make-shift—and I say that any government that will be burdensome on the smaller cities will be that.

I am in favor of the constitutional amendment that Mr. McKinnon proposes, but if that should be submitted to the people, and should fail to carry, I want a Code enacted by this legislature which shall stand for fifty years, and I believe it will do it, if you will just simply put aside any bias you have against one plan or the other, and look for a plan that will help the people of the municipalities, large and small, to obtain good government.

Mr. Frank Acton, of Lancaster, was introduced, and addressed the committee as follows:

Mr. Acton: Mr. Chairman and Gentlemen of the Committee—I shall ask for but a few moments of your time, and my remarks shall be brief and limited to a single subject.

The city of Lancaster, during the last fourteen years, has owned and controlled and operated a natural gas plant, which plant is to-day

worth perhaps \$500,000, with an annual income of about \$125,000. We have about 8,000 or 10,000 acres of gas land under lease, and from the profits of this plant we have been able to erect a magnificent city hall, improved waterworks plant, modern fire engine houses and other improvements. For perhaps six or eight years the city of Lancaster has not been required to have a bond and interest fund, our portion of the municipal indebtedness chargeable direct to the city has been paid from the natural gas fund, and the city's portion of every public improvement has been paid from that fund.

I recite these facts that you may fully appreciate the great importance we attach to our natural gas plant. We in Lancaster frequently say that our gas plant is the goose that lays the golden egg, and I am sure we want it to live on.

In the code under consideration, and I refer to the Comings Bill,—there is a provision for municipal ownership of lighting and heating plants. In the opinion of some persons that would be sufficient to warrant us to continue the operation of this plant; in the opinion of others, it would not be. You will remember that we are required to go out of the municipal corporation to do business. Our gas land lies from two to ten miles from the city, and we are required to go there and lease these lands. There may be in the code, though I have not been able to find it, a provision for a municipal corporation to become a lessee; if there is such a provision, I have not discovered it. I see that municipal corporations are empowered to lease public lands, in which case, of course, it would be the lessor, but in operating this business, we are always the lessee.

Now, yesterday an amendment was introduced in the Senate, as an amendment to section 15, line 135, commencing at the word "plant," the amendment would add these words: "And to establish, maintain and operate natural gas plants, and furnish the municipality and the inhabitants thereof, with natural gas for heating and lighting purposes, and to acquire, by purchase, lease or otherwise, the necessary lands for such purposes, within and without the corporation."

Mr. Bracken: The gas is used for power purposes, to some extent; for example, in the use of gas engines, and it might be well, perhaps, to add the word "power."

Mr. Acton: I thank you for the suggestion; perhaps it would be well, but a very small proportion of the gas is used in that way. Now, we take it that this amendment will unquestionably cover the subject, and all we wish, gentlemen, is that we may receive such legislation in the

way of amendment as will enable us to continue the operation of this plant, which has been of such great good to our city. We think our request is reasonable, and we are sincerely hoping that you will see your way clear to grant us the request we make.

I shall gladly answer any questions pertaining to our gas plant. As I said in the beginning, I want to limit myself to this one subject. I thank you for your attention.

Mr. George Wuichet, of Montgomery, was introduced, and addressed the Committee as follows:

Mr. Wuichet: Mr. Chairman and Gentlemen: There are but few points that I wish to call to your attention, as meeting with our disapproval.

The first one is, we object to the system of electing for three years, and removing at the end of three years, all the principal officers of the municipality. I believe, however, that that has probably been before this body.

There is another objection that we have. In House Bill No. 5, I believe it is provided that the salaries of the police and fire departments will not be lowered from what they are at the present time. Now, we are suffering with a crippled fire department, in the city of Dayton, by a bill that was passed, creating a law that fixed the salaries of the fire department; that is, the minimum salaries of the firemen. Now, we feel that we, if we are able to fix the salaries of all the principal officers, we are able to say what the firemen and the policemen should get.

Dayton is peculiar to itself, as a city; I do not believe there is another city in the United States like it, and we feel, therefore, that we should not be treated differently in that respect from others. If the salaries in the other cities are what they should be, that is all right and good; but we feel that the creating a minimum salary is not good for us, and the objection that we have to it, is, that we are now crippled in paying that additional salary, without an additional levy; we have had to make a levy to meet that additional requirement, but it will not be available until next February.

The first objection that I stated, in regard to having all the officers' terms expire at the same time, is, that it leaves us without a balance wheel. You know as well as I know that we are often swept by a tidal

wave of some fad or policy, and all our vicious legislation, or three-fourths of it, comes from some such tidal wave.

Now, if such tidal waves sweep over the municipality at an election,—as they frequently do—all the old officers would go out, and it would put in a set of new, untried, inexperienced officers whom we would have to endure for three years. Probably you will say that is what we deserve, because we elected them. We desire home rule as much as anybody else, but we think, that on sober, second thought, in many cases, we would not do as we have done; we would feel, on sober, second thought, that we were in a very bad predicament.

You recognize yourselves, that probably three-fourths of the members of this body would not be here, unless they were elected by political parties, so termed. Now, where are you going to take it out of politics? Politics governs the cities, politics governs the state, politics must govern the municipalities, and when you go to eliminate the one, as you try to do under civil service, I believe there is no question but you will fail.

Mr. Stage: Will the gentleman allow a question? I want to ask the gentleman if he thinks all the voters in any municipality are necessarily surprised in the public service?

Mr. Wuichet: No, of course not.

Mr. Stage: Don't you think a man might be elected, then, if our municipalities were under civil service? Do you think that would take away the power to elect representatives, Republicans and Democrats, the same as now?

Mr. Wuichet: To a certain extent.

Mr. Stage: Because a man is a Democrat or Republican, and is in the civil service, wouldn't he vote which ever ticket he wanted to vote?

Mr. Wuichet: Certainly.

Mr. Stage: The question is, then, that he be Republican or Democrat, he can still hold his office, under civil service, and vote the ticket he likes, without being removed?

Mr. Wuichet: Oh, I see the point you desire to make.

Mr. Stage: Isn't that the point?

Mr. Wuichet: No.

Mr. Stage: He has to be a Democrat, if there is a Democratic administration? But if there is civil service, he might vote as he liked.

Mr. Wuichet: As I understand it—and I served as judge of election for a good many years, until lately—how do you know what a man votes?

Mr. Stage: We don't. Why cannot he hold his office then?

Mr. Wuichet: The gentleman who spoke a few minutes ago spoke of the postoffice department. You will find a very great difference between the employes of the postoffice department; some in the department that he was referring to ought to be gotten rid of, and there is no way to be rid of them; the employe is there; he performs his work, perhaps, but he merely performs his work, or his duty; he does no more. Now, if you put a police or a fire department under the same system, and bring them under the same influences, you may get the service performed, but you will only get as much as is demanded; he doesn't do any more; he holds his position merely because he has passed the examination, and he merely fulfills his duty; while the other way, I claim when he is there he will do more than fulfill the duties required of him.

Mr. Stage: Is it not true, under the present system, a very large portion of the time of public employes is devoted to political work?

Mr. Wuichet: It may be in your place, but in our place, we have so many non-partisan boards——

Mr. Stage: I will ask the gentlemen if he does not know it to be a fact that the first year the civil service was established in Chicago, it reduced the expenses of government of that city about \$1,000,000.

Mr. Wuichet: I do not.

Mr. Comings: There was one thing that you said at the first that I think the committee did not quite understand; in regard to the salaries in Dayton; will you state that again?

Mr. Wuichet: There was a bill passed here some time ago, by a tidal wave—a bill making the minimum of salary for firemen,—fixing that. That was contested in the courts and the courts decided against us. We made no provision for a levy at that time. After the decision was rendered we had to increase the salaries; as a consequence, we had to reduce the force in order to meet this additional salary. Now, we have provided this year for that additional levy, but that still cripples the department, because we felt that any increased levy that would go to the extent of giving them all the salaries that were required, could not be made, would raise the taxes to too great an extent.

As I understand this—I have not seen the original bill, only the newspaper copy of it—it stated the police and fire department salaries should not be reduced from the present minimum standard; and that is what we wish to be relieved from.

Mr. Comings: You want that part eliminated?

Mr. Wuichet: Yes, sir.

Mr. Comings: What is your total levy for municipal purposes?

Mr. Wuichet: The total of all, as we have recommended, is 2.47; it was 2.68, but that takes the state and county and municipal, altogether. It is seven mills.

Mr. Comings: This gives authority to make it ten mills. Would you not, under the provisions of the code already, perhaps in times past, enacted, have the privilege of issuing municipal bonds to cover that deficiency?

Mr. Wuichet: We feel the minimum is too high.

Judge Thomas: How are your police and fire officers appointed in Dayton?

Mr. Wuichet: By a bi-partisan board.

Judge Thomas: Is there civil service in those departments now?

Mr. Wuichet: Not particularly; there is no examination.

Judge Thomas: The only civil service is such as arises from the fact that your board is bi-partisan?

Mr. Wuichet: Yes.

Judge Thomas: In your judgment, does the non-partisan board in the department of police and fire, do away with the necessity of the merit system?

Mr. Wuichet: It seems so to us.

Judge Thomas: Are you in favor of the civil service system as applied to those departments?

Mr. Wuichet: No, sir.

At this time a motion was carried to go into executive session.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

SEVENTY-FIFTH GENERAL ASSEMBLY.

EXTRAORDINARY SESSION.

THURSDAY, SEPTEMBER 11, 1902, 2:00 P. M.

The Committee met pursuant to adjournment, all members being present.

The Chairman: The programme this afternoon is a continuation of this morning's — Representatives of city and village councils and municipal leagues.

Mr. Hypes introduced Mr. David F. Snyder, of Springfield.

Mr. Snyder: Mr. Chairman, and Gentlemen of the Committee:— We have a park in Springfield which is governed by a park board of five and conditions exist in connection with this park which are different to almost all our cities. We have a bequest of \$200,000 in United States bonds the interest of which is devoted to the improvement of the park. When the gift was made it was made with the distinct understanding that the officers having this money under control should not hold any political office. About five or six years ago the general assembly enacted a special law creating a park board, which board had the control of this money. They acted in conjunction with an advisory board appointed by the Court of Common Pleas. The board acts without compensation and has given entire satisfaction to the city of Springfield. We hope that the board will not be disturbed and will be left out of any political departments. We need no compensation, we ask for none, and we fear complications might arise if the control of this fund was given over to the board of public safety and taken out of the hands of the park board.

Mr. Worthington: Who would you suggest have the appointing power of this board?

Mr. Snyder: It could either be by the council or by the mayor with the consent of council. At present we are appointed by the tax commission. I don't think that makes much difference.

Mr. Price: Suppose cities are given the power to create a park board, would that suit you?

Mr. Snyder: I don't know, but if we were sure of having an independent board it would be all right. I should like to see a board which would not have any connection with the city or county officers. I would rather it be specified there must be an independent board.

Mr. Price: Supposing we cannot pass that?

Mr. Snyder: We would have to have the next best thing. I would prefer that the legislature give us authority to have this board.

Mr. Price: Created by ordinance?

Mr. Snyder: I think without an ordinance would be better

Mr. Price: All cities are not situated as you are. We may not be able to accommodate you and the others too. Then the question comes down to whether a board appointed under an ordinance of council would be better than to leave it under the public service board.

Mr. Snyder: I would prefer to have that under the board of public service.

Mr. Hypes: I would like Mr. Snyder to state about how much time is given by the members of the present board to their duties.

Mr. Snyder: Our park is about seventeen years old, and we have about 217 acres. We are doing a great deal of improving and during the next year or so we expect to spend about \$25,000. At the present time each of the five members will give from a day to a day and a half each week to the consideration of the different problems that may come up, together with the meetings. We have the loaning of about \$200,000 and that, of course, takes up time. Our president gives about three days a week.

Mr. S. A. Wilkinson, member of the board of public affairs, of Springfield: Mr. Chairman and Gentlemen of the Committee: Our park was given to the city by Mr. Snyder, uncle of the gentleman who has addressed us. The control of the park was in the hands of the board of public affairs as was also the control of the hospital, but that has been taken away from the board of public affairs by special laws which were indorsed by both the board of public affairs and the city council. While I have nothing to do with either the hospital or the park, I must say they are better managed than our board is, and these two things especially should not be in the hands of the board of public service.

There are one or two things worth calling special attention to in regard to direct city affairs. The first is the matter of assessments for

public improvements. This bill provides you cannot levy a special assessment for a street improvement within five years to exceed twenty-five per cent of the tax valuation. That is our law in Springfield now and it interferes very much with the making of public improvements on streets, unless the city is willing in many instances to bear a very much too large part of it. I think that the Cincinnati law is a better one than ours. There they have a committee that fixes a valuation on the property on the street to be improved. On the subject of street improvements the code provides that the proposition to improve a street shall originate with the city council. I think you will have better improvements if you let that proposition originate with the board of public service.

Mr. Metzger: Do I understand that you are opposed to your present method of levying special assessments for street improvements, or are you satisfied with the method if the twenty-five per cent rate of the tax valuation is increased? ,

Mr. Wilkinson: I think twenty-five per cent of the value is enough. I don't believe in basing it on the tax value.

Mr. Metzger: Who in your judgment should create this appraisal committee?

Mr. Wilkinson: Either the board or council, I don't care which.

Mr. Metzger: Would you limit that committee to the appraisal of the real property, the land, or would you include in that the improvements?

Mr. Wilkinson: I believe I would include the improvements.

Mr. Worthington: Under the present law don't you have to get the consent of a majority of the property owners?

Mr. Wilkinson: No, sir; we do not. We can order a street improved if council concur in it if every property owner on the street objects to it.

Mr. Worthington: Is that a special act for your city?

Mr. Wilkinson: Yes. We are governed by a special act passed in 1890. You have a better run of improvements than if you leave it to the people who live on the street.

Mr. Worthington: My idea was the people who pay for the improvements should be consulted.

Mr. Wilkinson: They are consulted to a certain extent, but not to the extent of letting them say exactly whether or not those improvements shall be made. Most of the cities are unfortunate in having a lot of men who own a lot of property on a street and don't want to improve it, and

the small owners cannot get what they want because they are prevented by the owners of the larger amount of frontage.

The Chairman: The next speaker will touch upon the subject of village government. He is very competent to speak on the subject, having been for thirteen years mayor of one of the best villages in northern Ohio, and he will speak with authority on some of the subjects touched upon in House Bill No. 5.

Hon. George Couch, Mayor of Wellington: Mr. Chairman and Gentlemen of the Committee: I believe I voice the sentiments of nine out of ten villages in Ohio when I say we would be more than satisfied to have the present code remain. It does not seem fair to drag the small cities or municipalities of Ohio into the discussion of this code. We have elected our officers under a law that has not been questioned. The cities are causing this disturbance and it seems to me if the members of the legislature desire to cut matters short they could eliminate the village part from the Nash Code and their labors would be very much easier.

Speaking of the trustees of public affairs in a village, I don't think it is possible to get three competent, intelligent men who would take that office. We cannot afford to pay them large salaries, because you limit us to ten mills. They must work almost gratuitously, and as all the management of our municipal government would be practically thrown into their hands it would require a great deal of their time, and I doubt if you could get competent men to fill those places who would accept the position. I believe trustees of waterworks, electric light plants and cemeteries should be elected by the people. A man might be good on the board of electric light works but would not be fitted for the health department; and when you put all these things under the management of three men you are exacting a great deal from them and you would not get as good results as under the present form of government.

I think the marshal of the village should be an appointive office. He is the chief of the police and should be accountable to the mayor for his acts, subject to removal. My experience has been you would get far better service in the police department if that was made an appointive office and the officer removable by the mayor. I think it should be a fee office. If you fix a salary there is no incentive for the chief to do any more than draw his salary.

In regard to cemeteries, there are a good many cemeteries like ours, which is owned jointly by the township and the corporation. The present law provides for the election of trustees jointly. If that were put in the hands of this board of public affairs elected in a municipality the outside people would have no voice in it whatever.

Mr. Metzger: Do you have a separate cemetery board now?

Mr. Couch: Yes, sir.

Mr. Metzger: Do you think the mayor in a village ought to have the veto power?

Mr. Couch: Not as given in the Nash Code bill. It takes two-thirds to pass a measure, and they could pass a measure over his veto. Two-thirds of six is four.

Mr. Metzger: With the council constituted in any other manner do you think the mayor of a village ought to have the veto power?

Mr. Couch: If you had the right, mayor, yes; if you had not, no.

Mr. Metzger: Do you think the council ought to be elected all at once or ought it to be continuous?

Mr. Couch: It ought to be a continuous council.

The Chairman: Give us your views about the solicitor.

Mr. Couch: I would leave the solicitor entirely out. The moment you make it an elective or appointive office you must provide a salary for it.

Mr. Metzger: There is a provision in the Nash code with respect to both city and village councils that ordinances must be read at three different meetings, and with respect to certain ordinances the rules can not be suspended. What do you think of that?

Mr. Couch: I think it is a good one.

Mr. Worthington: Do you think the mayor should have the power to vote on all ordinances or resolutions where there is a tie?

Mr. Couch: I don't see how you could do very well without it.

Mr. Worthington: Don't you think it would be well for the council to organize with one of its members as president?

Mr. Couch: It would be perfectly fair and right. There would be no harm in it.

Mr. Worthington: It is argued the mayor should be divorced from the legislative department. Why should not that apply in a village?

Mr. Couch: It seems to me you could deadlock the council in that way and could not pass any measure, perhaps.

Mr. Worthington: Could not that be overcome by making the membership either five or seven?

Mr. Couch: Yes, sir, if you think fit to change it. The mayor is usually as competent to vote on any question as the council.

Mr. Worthington: But he is not elected for that purpose. He cannot vote on any ordinance involving the expenditure of money.

Mr. Couch: His vote does not pass an ordinance.

Mr. Worthington: This code says: "No ordinance or resolution granting a franchise or creating a right, or involving the expenditure of money, or the levying of any tax, etc., shall be passed, unless the same shall have been read on three different days, and with respect to any such ordinance or resolution there shall be no authority to dispense with this rule."

Mr. Couch: We don't call that an expenditure of money in the sense that the statute generally refers to it. Speaking of the Nash code the duties that would devolve upon a clerk would take almost his entire time.

The Chairman: You think the requirements placed upon the clerk of a village should be different to those placed on a clerk in a city, that is, they should not be carried to that extent of nicety?

Mr. Couch: Yes, sir. The weekly and monthly reports to be made to council are such that you would have to pay the clerk salary enough so that he would have to devote his entire time to his office.

The Chairman: Is it not true, under the present code, that these accounts can be demanded by the mayor or any member of the council?

Mr. Couch: Yes, sir.

Mr. Worthington: What do you say about the street commissioner?

Mr. Couch: That is immaterial whether he is an appointive or elective office. He is accountable to the council for all his acts. I think it should be an appointive office.

Mr. Worthington: Do you think the board of health should be appointed?

Mr. Couch: Most assuredly. You can get good men that way.

Mr. Worthington: In regard to the pay of the health officer, do you think that should be regulated by the council or the board of health?

Mr. Couch: It should be by the board of health.

The Chairman: The next speaker will be Mr. E. L. Hyneman, of Columbus.

Mr. Hyneman: Mr. Chairman and Gentlemen of the Committee:

The fundamental differences between the Governor's code and the York bill are that the latter grants powers and limitations on their exercise; provides for the organization of municipal corporations; designates the chief executive and legislative officers; and leaves all other details and directions to the corporations; the former, in addition to these provisions, prescribed a more detailed form of organization, and, as to some of the powers, a detail direction of the manner of their exercise.

There is apparently an agreement that the grant of powers and the method of organizing the incorporated body must be uniform; while on the other hand, the code ought to be so elastic that each municipality could select an administrative force such as is suited to its local conditions and exercise the granted powers in a manner suited to peculiar local needs.

At this point all agreement ends. Admitting what ought to be, the governor's advisors say that it cannot be.

We shall endeavor to show how inconsistent this contention is with the actual measure proposed by the governor. We believe that we will demonstrate that the York bill only grants powers which, in law, are of the same character as the powers granted in the governor's bill. We are confident that we will prove that, if any practicable law, drafted along the lines recommended by Governor Nash, is constitutional, then the York bill is constitutional.

The constitution requires one of two things: Either that the legislature provide:

(1). A uniform method or plan under which municipalities can organize themselves.

(2). A complete scheme of organization.

There is no half way ground. The law knows no compromises with its mandates. A mandate that a thing shall be done is not complied with if the thing is half done.

The governor's advisors contend for the second proposition.

They say that the constitution requires the General Assembly to provide a plan of organization; that means a complete plan, and a requirement that a *complete* plan be provided is in effect an injunction against any power being given the people to complete an incomplete plan of organization.

The mayor may be the chief executive officer and the council the chief legislative body and all other officers, and departments may be subordinate, yet, says the governor, such an organization can not be said to

be complete. If it is, then the York bill complies with a requirement that a form of organization be prescribed. But the governor says that the York plan is unconstitutional because it does not provide a form of organization. He says that boards of public safety and of public service, solicitors, treasurers, auditors, fire chiefs and police superintendents, either elective or appointive, must be provided for.

These are not chief executive officers. They are all subordinate to the mayor, though, in many respects having powers the exercise of which he can only supervise. And if these must be provided for, then where will he draw the line? Certainly not according to the arbitrary desire of interested persons. We must comply with the law, and if these subordinate officers must be provided, then we must provide all officers or agents of the corporations.

Are not the engineer, the police captain, the sealer of weights, the inspector of foods, also administrative officers, and equally essential to a complete scheme of government?

If the plan must be a complete plan, it is not complete unless the superintendent of the waterworks, the superintendent of parks, and the superintendent of the electric light department are provided for. For the governor does not stop with chief executive and legislative officers.

The mayor supervises all executive officers (section 174 Revised Statutes, and page 36 of bill). He is the head of the police and fire department (p. 46), and the superior of the board of public safety (p. 46) and of the fire chief (p. 47).

The board of public safety is the superior of the fire chief (p. 46) and superintendent of police (p. 47).

And all of these officers are held to be essential to a complete organization. If this contention is correct, then the legislature must, in its code, create every office, and any law which permits the city to create an office is unconstitutional.

By this standard the Governor's code is unconstitutional, for it permits the city to create many offices.

I give a parallel schedule of offices created :

Fire chief (p. 47).

Superintendent of police and their superiors (p. 47) the board of public safety (p. 46), and its superior the mayor (p. 46).

Some of the offices which the city is permitted to create:

Chief of police.

Superintendent of fire alarm telegraph.

Superintendent of police telephones.

Superintendent of police stations.

Captains of fire companies, etc., etc.

Board of public service (p. 41).

Superintendent of electric light dept.

Superintendent of parks (p. 45).

Engineer.

Warden.

Superintendent of waterworks.

Chief city physician.

Director of charites, etc., etc.

Solicitor (p. 41).

Assistant solicitor or police prosecutor.

Clerk and sergeant-at-arms of the city council (p. 32).

Assistant clerk, etc., etc., of that body.

If, however, the permission may be given to the city to create these offices, it follows that the power can be given to the city to create or not create boards of public service, police commissioners, park commissioners, etc., etc.

The proposition may be stated as follows:

If the governor's code is not constitutional, then —

(1) As the power to create any office and provide for the selection of any officer can be given to the municipal corporation, the legislature may grant the same power as to all officers.

And therefore,

(2) The constitution does not require the legislature to provide a complete plan of government, but only a uniform method of organizing one.

I do not believe the legislature can go far wrong if they adhere to the doctrine that, if a thing is bad and is not required to be done, it should not be done.

That this plan of providing one uniform form of organization and direction as to the exercise of powers is obnoxious to the people is clear. That it would best serve the interests of the individual and the state to leave to the municipalities of Ohio the largest measure of local self-government is also clear.

The municipal government more directly affects, for good or bad, the property, the health and the peace of mind of its citizens than does the state or national government; and the knowledge that this local administration will bear good or evil fruits according as the citizens actively interest themselves in civil problems, will arouse an interest in public affairs, both local and general, which will ultimately improve the conduct of state administrations.

In comparison to the advantages of the larger measure of home-rule, which are so obvious as to require no further exposition; what a harvest of tares are you asked to sow.

We formerly knew a man who had fallen heir to a great heritage. His power swelled his head, and he thought that all men would have to do as he willed. He had a benchman in the shoe business who had accumulated a dead stock of number ten shoes. This retainer said: "My powerful friend can use his influence to compel the public to take the shoes and I will so save myself." And he played upon the amiability of his popular friend until the latter assumed his burden. And the people had confidence in the great man, and for a time they listened to his advice. Men with number six feet heroically slashed around in shoes which pointed backwards; others, who prided themselves on the neat appearance of their number five feet, sacrificed their pride of appearance; all men tried to accommodate their feet to the demand of their beloved and amicable great man; and the benchman put his finger to the side of his nose, winked and said: "The people are easy, I will go into the hat business and when I accumulate a seed stock of old hats of impossible styles and sizes, I will boost another great man into the affections of the people, and he will have them relieve me of my load."

The people came to speak in outrageous terms of the man who had made them all wear the same sized shoes, yet the time came when the shrewd hat dealer played again upon their loyalty.

Some years ago a wood worker opened a buggy shop. He had notions. It was his belief that a wise buggy maker should always draught the style and details of any vehicle that any men wanted. He believed that while a customer always said he wanted a certain style, and usually specified the kind of spring, and hub he wanted, and demanded certain leather, and a particular size of axle, and certain coats of paint, as best suited to the use to which the vehicle would be put; yet he, the wise maker, knew best. He resolved that he would design a vehicle, suited for all uses and for all men, and compel his customers to buy it or none. His subsequent entry in a court of bankruptcy put an end to his career.

Not long ago a certain clothing manufacturer had a virtual monopoly in the Mississippi Valley. He made and sold in New Orleans light suits made of certain goods, and heavy ones in Minneapolis. One day the courts decided that, by an ancient agreement, he had stipulated not to make suits of that particular light weight cloth. In the excitement caused by this decision he lost his head and jumped to the conclusion that he could not make light weight suits at all, but only suits of heavy cloth. "Never mind," he said, "I have a monopoly. The people of New

Orleans and Memphis may not like the heavy clothes which St. Paul demands, but I will make but one kind and they must wear them."

He lost his control of the business of fashioning clothes in that valley.

These historical instances of the effect of trying to suit all men and all conditions with an inflexible, unvarying rule, must have been known to our amiable, well-intentioned governor, yet, like the suit maker, the excitement caused by the decision of the court deprived him of his usual good judgment, and like the buggy maker, he believed that it was possible to design something which would fit all purposes and conditions.

He would fasten the same code upon the large and small cities. What would our builders say to a proposition to make the doorways of our houses of one unvarying size of $1\frac{1}{2}$ by $4\frac{1}{2}$ feet; or would the engineers approve of a law which fixed a limit of five horse power to all stationary engines. We can imagine that some tender hearted, public spirited man, might propose that the maximum labor of all employes should be limited to that of the weakest, least skillful of them; or that the lessons given out and the rapidity of learning permitted in our schools should be limited to the capacity of the sickliest and dullest scholar; but would we accept the view of this man?

To the man who, coming home from a county which needed no bridges, because it had no streams but brooks, propose to limit bridges to ten tons weight, would he not say: "Your county is but an unknown part of the world. Your vision is limited to the confines of your home. Your needs are not ours, and ours are different from all others. Our ideas, our desires, our views of what are public necessities, differ from yours and you have no right to confine us within the narrow range of your desires."

And in saying this would we not, in justice, be compelled to let this man of few desires and small ideas, have *his* own way?

But the advisors of the governor say that the constitution requires us to do these things; offensive and unstatesmanlike though they are. They cite no decisions of the court to support this statement. They merely express the doubt.

But there is no provision of the constitution which requires the legislature to provide any of the details of the exercise of granted powers.

If such a requirement existed, then this code is unconstitutional, for it leaves to each city the power of determining the manner in which it will exercise (among others) the following powers:

It may prescribe the salaries of many officers, including the mayor (pp. 35, 46).

It may provide the classification of officers and employes of the fire and police departments (p. 48).

It may fix the terms of many officers, and employes and prescribe their duties.

It may determine how it will —

Regulate streets (pp. 6, 15).

Safeguard the public health (p. 43).

Abate nuisances, etc. (p. 43).

It may determine whether and how it will —

Lay off, widen or improve a street (p. 6).

Provide registration of births and deaths (p. 43).

Provide persons for officers and employes (p. 49).

Purchasing and acquiring property (p. 3) except in cases provided for in sections 78 and 107 of this code.

Provide causes for removing some appointive officers and employes (pp. 36, 37, 39, 40, 41, 50).

Regulate ten-pin alleys, taverns, etc.

Take a census.

License certain vehicles.

Prohibit certain kinds of houses, and public exhibitions.

Prevent riots, preserve the peace, etc.

And he permits the board of health service to provide their own rules, governing the passing of by-laws.

But the governor's advisors say that his code is constitutional, and they are wise men. If, however, the governor's code is, in these respects constitutional, then it is clearly within the power of the legislature to determine whether it will have —

A board of public service to leave to the city the power of determining who shall have the management of public works.

A board of public safety or leave to the city the power of creating a police commissioner, or leaving the management of the police department to the mayor.

If the governor's code is constitutional, then we may permit the city to determine how it will —

Prescribe the method and limit the power of officers in purchasing all property, supplies and materials.

Provide a merit system for the appointment and advancement of its agents and servants.

If the governor's code is in these respects constitutional, then the legislature can grant to the corporation the privilege of determining how it will exercise every granted power, and the York bill is in these respects constitutional.

It is claimed by the Governor's advisors that the legislature may, after providing for the incorporation of cities and for their organization, not only provide the administrative officers, but, prescribe the manner of exercising those powers, extending the direction even to the details; and also provide some of the rules and by-laws which have heretofore been prescribed by the local officers. Are these properly an exercise of legislative or local administrative powers?

Renney, J., in *C. W. & Z. R. R. v. Commissioners*, 1 Ohio St., 86, said:

"As the General Assembly, like other departments of the government, exercise only delegated authority, it cannot be doubted that any act passed by it, not falling fairly within the scope of legislative power, is as clearly void as though expressly prohibited. * * * It is not my purpose to point out numerous cases in which a legislative act might be avoided as transcending the limits of the powers delegated to that body, although not expressly prohibited. The attempted exercise of executive or judicial power, delegated to the other departments, will very readily suggest many instances, while many others may be easily imagined, of encroachments upon reserved rights, not surrendered to any department of the government.

From these considerations, it follows that it is always legitimate to insist that any legislative enactment, drawn in question, is void, either, because it does not fall within the general grant of power to that body, or because it is expressly prohibited."

In *State ex rel. v. Commissioners*, 54 Ohio St. 333. the court held expressly that the legislature could not usurp administrative power, i. e., exercise any power over local affairs which was administrative in character. Our government is based upon the doctrine of division of powers. The administrative may not exercise legislative powers and the legislature may not usurp the functions of the executive or judiciary.

It is not always easy to draw a well defined distinction between legislative and administrative acts. But in the case just referred to, the

Supreme Court determined that an act of the legislature authorizing county commissioners to improve a road in a *prescribed manner* is an exercise of administrative power and therefore invalid.

The Court said:

"It is an assumption of powers over the affairs of a county not possessed by the General Assembly—it is administrative in character and not legislative." And again:

"It is simply a usurpation of the powers heretofore always allowed to the proper administrative board selected by the people of the locality concerned in the exercise of the right of local self-government." And again:

"It is true that under this statute this improvement must be authorized or more properly approved, by the commissioners, which may be said to be some protection against the improvidence of the legislature. *But, as already shown, when they act, they must proceed in the way and to the extent, mapped out by the legislature. The people interested have no control, and they are deprived of the initiative in the matter, which is the important point in the privilege of local self-government.*"

I may be permitted to state the proposition in language suggested by that used in *Walker v. Cincinnati*, 21 Ohio St., 46, by Scott, C. J.

If the statute grants to the local authorities the power to perform some local act, it is a legislative act; but if it determines that the act *must* be done and in a particular manner by an unwilling community, its constitutionality is in question. How far the court will go in applying this doctrine is problematical. I doubt that the court will extend these doctrines to the point of denying the power of the legislature to go as far as is proposed in the Governor's bill. But, in view of recent events, we can not rely on this assumption. A sound judgment suggests to us that the court may fix the line of demarkation between legislative and local administrative acts dangerously close to the exercise of legislative power involved in the Governor's Code.

Conservative statesmanship will carefully avoid a departure from the well defined limits of legislative power. If we depart from the doctrine that the manner of exercising granted powers of local administration and the determination of the details; that the prescribing of certain local regulations or rules for the comfort and happiness of the corporators of a city, are administrative acts, there would be no check upon the power of the legislature to provide such regulations or by-laws (usually called

ordinances). That Supreme body could then prescribe all the regulations which would govern the civic acts of citizens; it could provide that certain acts, which in a given community would be distasteful and unnecessary, should be done. It could direct that a street be improved according to certain plans and specifications, or that the city should sell a piece of property in a given manner:

In the most favorable view of the situation, we must not only admit that the question as a legal one, is yet an open one, but, from the standpoint of a sound public policy, the legislature should leave to each municipality the fullest possible measure of local self-government that is consistent with conservative legislation.

This policy is not carried out when, as in this code, we provide in detail the manner in which the city shall:

Purchase supplies, or material (pp. 44-45); leasing or selling property (p. 14); appointing officers and employes, advancing and removing them (pp. 63, 48) and pass ordinances; (Sec. 1694 R. S.) provide pensions for officers and employes in some cities; remove and fill vacancies in certain offices, (pp. 63, 32, 33).

There is no doubt of the power of the General Assembly to fix the terms of office and salaries of State, county, township and in general constitutional officers; but is the act of fixing of the terms of a police captain, a member of a board of public safety or a janitor of a local corporation an administrative act? It is yet an open question whether an act of the legislature enjoining on a municipal council that it shall pay a corporation, agent or servant a given salary, or provide for his term for a given time, is less a local administrative act than the authorizing of a board of commissioners to improve a certain road in a given manner.

Yet the Governor would have the legislature perform such acts as to the following offices: Member of public safety, fire chief, superintendent of police, solicitor.

The York bill avoids all these shoals. It gives the people the powers which a conservative policy suggests; it limits the extent or exercise of these powers wherever necessary. It provides for the chief executive and legislative agents and a uniform method of organizing; and it leaves to each city the right of exercising these powers as the various local conditions, traditions, ideas and desires suggest.

The Chairman: The League of Ohio Municipalities has been in session today and has prepared some resolutions which will be presented

by Hon. W. L. Hughes, of Lorain. I am sure the committee will be glad to receive the resolutions.

Hon. W. L. Hughes: Mr. Chairman and Gentlemen of the Committee:

We are not here to interfere in the matter of making codes especially or anything of that kind, but we wish to present to you some matters of local importance in a majority of instances. The League of Ohio Municipalities have to-day passed the following resolutions:

1. "That it is the sense of this organization that the fullest measure practicable of home rule be given villages and cities.

2. "That so many as possible of the city and village officers be elected by the people, but this should not extend to the department of public safety."

It is fair to state that on this proposition there was some discussion and diversity of opinion. If, however, there were any persons present who favored the board plan, they failed to say anything.

3. "That municipalities be limited as to the power to issue bonds only so far as the same applies to those of a general nature.

4. "That bonds for special improvements to be paid by special assessments be not so limited, but that the limitation be upon the assessment."

On that I wish to say that the law passed last winter will have a tendency in those cities that are growing to any extent to hinder improvements of a special nature, such as street paving, sewers, sidewalks, river and harbor improvements. It does not seem to us fair that anything that is not included in the tax duplicate or means of revenue should be included in the eight per cent limit. We do not think it right or expedient that should apply to special improvements.

5. "That municipalities be empowered to have assessments upon benefited, improved and unimproved property for laying water mains in the same manner as provided for other improvements."

That is for this reason: Heretofore if you wanted to have sidewalks or paved streets or anything of that sort, you were at liberty to assess the benefited property by either one of the three methods named. With water mains you could not do that. We believe where water mains are laid in a city they ought to be put on the same basis as sewers or any other improvements.

6. That provision be made whereby the municipalities may derive an interest revenue from monthly moneys on hand."

In our city of about 20,000 we carry an average of \$75,000 to \$100,000 in the treasurer's hands. The treasurer is not supposed to get any benefit from the possession of that money, the city cannot. By having special depositories provided for we could get interest on that money.

7. "That no complicated and expensive form of government for smaller cities be provided, but that as much as possible of the government machinery for larger cities be left optional for smaller cities."

For instance, take Norwalk. There they must have three members of the board of public safety, they must have a police judge, a prosecuting attorney and a police clerk, — six salaried men to look after their department of public safety, which consists of a marshal in the daytime and two policemen at night. So you see it works a manifest absurdity, and it would be ridiculous to harness up a city of that kind with all those officers. It would be like a tramp with a silk hat on.

8. "That provision be made to have a fair percentage of councilmen elected at large when consented to by referendum vote."

We believe more councilmen ought to be elected at large, for this reason. Wards are not all of the same mental and social caliber, and they sent out what is available. Sometimes what is available is not most desirable. I suppose most of you have had some experience with councils. They remind you of a first-year kindergarten class. If you have more councilmen elected at large and less councilmanic districts, we will get a little more of the gray matter that is so much needed.

9. "That the limit of assessments for sewers be raised to twenty-five per cent of the taxable valuation of the property to be assessed at two dollars a front foot."

That is the same law that we had before. In the smaller cities you can not build sewers within this limit. The property is perhaps on the duplicate for forty per cent of its value and a great deal is farm property, and ten per cent of that would not begin to pay for the sewers. You must either drop the project of sewers or have the cost placed on the tax duplicate, which is both unjust and unfair to the rest of the corporation. The limit does not hurt where it is on corporation property.

10. "That on all ordinances or resolutions, excepting those granting franchises, the council may suspend the rules."

We claim the council ought to have the right to suspend rules, except in the matter of granting franchises, but by the proposed plan councils would be three weeks in passing a payroll and only two weeks in accumulating it, if you had a semi-monthly payroll. Consequently, at the end of the year you would be one-third of the time behind.

11. "That on a referendum vote the council may grant salaries to councilmen in villages."

The league did not think it the proper thing to let the councilmen fix their own salaries, and they recommend, by a referendum vote, that villages may be empowered to pay their councilmen what they are worth.

12. "That all public printing be by competitive bids, and the contract to be awarded to the lowest legal bidder."

I suppose that will be taken care of, however, with all other contracts. It is provided usually, I think, that all contracts shall be taken care of in that manner.

13. "That no change be made in the present law as to the qualification of municipal officers with regard to the time of residence."

We don't think that for the mayor of a city of four or five thousand people you ought to demand a greater qualification as to citizenship than is demanded of the governor of Ohio. We believe the old qualifications for municipal officers were sufficient.

Speaking generally and for the city of Lorain, I wish to say that the eight per cent limit, including special assessments, will simply stop us from being a growing city and doubling our population in one decennial period. We are bound to go beyond that limit or else stop and remain right in the mud where we are. We have lots of streets, and they are long and they are wide. You ought to see the depth of them. We ask you to take the matter of the limit of bond issues and if you want to put a limit put it upon the assessments but not upon the bonds. Bond buyers are wise enough to put a safety limit on anything the city has to sell.

Mr. Metzger: One of the recommendations you make is that some sort of a code ought to be adopted here by which the smaller cities of the state need not use the same machinery that the large cities of the state require. What is your remedy for that?

Mr. Hughes: The only remedy that I see is to make the provision for all cities the same, but make it optional with the cities as to how much they shall use. You would have to either vest that power in the council or in a referendum vote.

Mr. Metzger: The constitutional lawyers tell us you cannot do that.

Mr. Hughes: With all due respect to the constitutional lawyers, I think you can, if you make it applicable to all the cities in the state.

Mr. Denman: Suppose that we organize the department of public improvements, the department of public safety, the department of accounts and the department of law. We provide that at the head of these departments there shall be a director and we also prescribe all of the requirements necessary to govern those departments under a director or directors. Then we provide further that if at any time council, by resolution, shall declare that it deems it necessary that the city shall have more than one director in the department of public improvements, then at the next municipal election the mayor shall issue his proclamation for the election of the number the council deems necessary for the city and from that time on they shall supervise that department. Would not that be constitutional?

Mr. Hughes: Applying to all municipal corporations I cannot see wherein that would be unconstitutional. I don't say by that it would be constitutional, but so far as my judgment goes, on the first blush I see nothing objectionable in it. On the matter of classification, you will permit me to say you cannot get to classification of cities this term, but you will get to classification of cities, you have got to come to it. It is a necessity. If it requires even a constitutional amendment to make it possible, cities will be classified and laws made to fit the particular cases some way and some time.

On motion, the committee adjourned to meet at 7:30 p. m.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

EXTRAORDINARY SESSION.

SEVENTY-FIFTH GENERAL ASSEMBLY.

COLUMBUS, OHIO, SEPTEMBER 11, 1902.

7:30 O'CLOCK, P. M.

Pursuant to recess, the Special Committee for the consideration of Municipal Codes met in Legislative hall.

On roll-call, the following members responded:

Guerin,	Denman,
Price,	Hypes,
Williams,	Willis,
Metzger,	Stage,
Thomas,	Bracken,
Chapman,	Ainsworth,
Allen,	Maag,
Silberberg,	Huffman,
Worthington,	Brumbaugh.

In the absence of the chairman, Mr. Willis presided.

Mr. Willis: Gentlemen of the Committee: We are fortunate in having with us to-night to address the Committee, one of the most eminent divines of the State, and I might say, of the nation, because Doctor Gladden is known beyond the confines of his own State. I take great pleasure in introducing to you Reverend Doctor Wasington Gladden, who will discuss municipal government under the provisions of the Comings Code.

Gentlemen of the Committee,—Dr. Gladden.

Dr. Gladden: Gentlemen: I shall make no apology for reading to you what I have to say, because I want to be concise, exact and direct: I do not want to waste your time, or my own, and I want to say exactly what I have to say, and know, when I have finished, that I have said it.

I accept, with gratitude for the honor, the invitation which I have received from the Speaker of the House to appear at this time and give you some of the results of my thinking upon the problem you are trying to solve. The seriousness of this juncture in the affairs of our cities, the granting and difficulty of the action proposed are probably by this time evident to most of us. No question of equal importance was ever submitted to the Legislature of this State; no question of more far reaching consequence is likely ever to be presented for decision to any member of the Legislature.

Every man who has given the subject of municipal organization any careful attention, ought to be willing to make such a contribution as he may be able to the right understanding of the business now in hand.

With respect to the measures now before you, let me say that it is well, in my judgment, to make what is known as the Governor's code bill the basis of your action. A large part of that bill should be adopted, I think, substantially as it stands. The first chapter, providing for a classification of municipalities, is perhaps as good a division as can be made; and the fourth chapter providing for the organization of villages could probably stand for substance. My judgment is that it contains some features which are not wise, but the outline given is on that can be followed for the most part.

The second chapter of the Code, also, defining powers of municipalities, both general and special, is a good piece of work, in the main. I think that I would add to sub-section fifteen of section seven, a clause authorizing the municipalities to build and own street railway tracks; for that these structures in the street are all to belong to the municipalities at no distant day I have no doubt. I approve of Mr. Guerin's provision, that any street railway company asking for a new franchise, or an extension, shall be required to enter into an agreement to arbitrate disputes with its employees.

Probably other changes may need to be made in this chapter; I have not examined all its sections carefully; but the greater part of it seems to me well considered. All those portions of it which relate to the appropriation of property, to the sale or lease of such property, to the regulation of the use of the streets, to the levying and collection of taxes and assessments, to the borrowing of money, and to the maintenance and protection of a sinking fund furnish, at any rate, a good basis upon which the Legislature may proceed to build. Some alterations may, in your

wisdom, be found necessary; but the structure in its main features will probably remain.

The parts thus indicated as on the whole satisfactory include, as you will see, about three-fourths of the Code, fifty-nine out of seventy-eight pages of the printed copy. I am not, then, engaged in any sweeping condemnation of the measure submitted to you by the Governor; and I wish to emphasize this fact, for it is much pleasanter for me to agree than to disagree with my old neighbor and friend. I hope and believe that you will be able to incorporate into the Code which you will adopt, a good part of the work which he has done.

It is in chapter III, the chapter on the organization of cities that I find most of what seems to me unwise. Some of the provisions of this chapter are, in themselves, judicious, and part of them could be incorporated in such an outline code as the Legislature should enact.

The provision that in every council part of the members should be elected on a general ticket is to be highly commended; only I would increase the proportion of members to be elected at large. Indeed, if I had my way I would abolish wards altogether, and elect all members of council and of boards of education on a general ticket. The subdivision of the city into wards, with the exaggerated emphasis which is thus placed on the claims of the locality, and the opportunity for log rolling, is the cause, I believe, of a large part of the enormous indebtedness which has been heaped up by the cities. Each ward wants improvements for its own benefit, without regard to the general welfare, and expects its representative to secure them; to do this the member from the ward must promise to support similar iniquitous claims from other wards, and thus a majority is secured for a good number of measures, not one of which, on its merits could get a single vote. The selfishness of the locality, as contrasted with civic pride and patriotism, is thus fostered by the ward divisions; and I think that when we have become entirely civilized we shall do without them.

That, however, is a measure which I do not now urge upon you, for I do not think that we are yet sufficiently civilized to agree upon it; but I would make a start in that direction by electing a portion of every council in the manner suggested by the Governor's Code, only I would have at least one-third of the council so elected. If one-third of the council were chosen upon a general ticket, and represented the city at large, these representatives would be likely, I think, to be of a higher order of

intelligence and capacity than those chosen from the wards. Each party would be inclined to nominate men for these places who were known, and favorably known, to the people of the whole city.

The one objection to this plan which I have seen comes from one of our local statesmen who holds that it would promote corruption. This is the way he figures it: He thinks that it now involves quite a heavy expense for a councilman to get himself elected from one of our nineteen wards; that it would cost him nineteen times as much to get elected from nineteen wards as from one ward, and that he would therefore be obliged, when elected, to steal nineteen times as much from the city to recoup himself as he is now obliged to steal. The fact that such an argument can be seriously urged, illustrates several things, but nothing more forcibly than the kind of men we are now getting as ward representatives and councils and boards of education.

I am not quite clear about the provision that the president of the council shall be elected by the people, and shall be the acting mayor in the absence of the mayor, and his successor, in case of his death, resignation or removal, for the remainder of his term. On the whole I am inclined to favor this feature. It is not, however, specified that the president of the council shall have the appointment of the standing committees, and that point ought to be covered. That power does not belong to the vice president of the United States who is chosen by the people to preside over the United States Senate; it might be argued by analogy that the president of the city council had not this power, and that the council could choose its own committees. The matter should not be left in doubt.

I am inclined to agree with the Code that the auditor and treasurer should be chosen by the people, and to disagree with it in the provision that the solicitor should be the appointee of the mayor. It seems to me that this is a very important office, and one in which permanence is very desirable. The law business of the city is difficult, complicated, and extensive: the ordinary practitioner on being called to it finds himself hopelessly at sea; it takes him a long while to acquire the necessary familiarity with the business of the city and with the legislation which affects its interests. The need of a permanent tenure and of a large experience is more manifest here than in almost any other municipal department. Generally, our solicitors are removed before they have had time to learn their business. I have lived in Columbus twenty years, and

while I am not sure, I am inclined to the belief that during that time no man has been employed in the city law department for more than two years. We have had a number of good lawyers who have worked hard and faithfully to fit themselves for the service of the city, and just about the time they were beginning to get some knowledge of the business in their hands we have turned them out and called in a new set of apprentices. Thus the law business of the city is always kept in green hands; the experienced and astute lawyers, who manage the affairs of the great corporations can always count on a certain amount of legal experience when they make contracts with the city.

I am not impugning now the character or the ability of the men who have occupied this office in this city; I am pointing out the disabilities under which we force them to do their work, and of which some of them have made loud complaints to me.

In other cities greater wisdom is employed in dealing with this matter. In New York, for example, which has not always been as well governed as it might be, the wheel-horse in the solicitor's office has been there, I think, for twenty-five or thirty years, and there is no politician in those parts so daft as to suppose that the city could afford to dispense with his services. If, now, the solicitor were elected by the people, it might be that an incumbent would so commend himself to the people by his efficacy and fidelity that they would re-elect him several times. To every incoming mayor, to all the new executive officials, and to every newly elected council, it would be a great advantage to have the law officer of the city ready to give them prompt and decisive information or advice upon the law points arising, without being obliged to fumble around after dubious opinions, leaving them in uncertainty and confusion.

The feature of the Code now under consideration which I regard as least desirable is that which provides for government by boards. There is no need that I should enlarge upon this objection. The whole subject has been thoroughly threshed out in your presence a good many times. If any one cannot see that a board, whether partisan or non-partisan, is not a good head for an executive department, it is not likely that any argument of mine will convince him. The man who can conceive that the war department of the United States would have been better managed during the rebellion by a non-partisan committee of four than it was managed by Edwin M. Stanton, or that it could be better managed

to-day by such a commission than it is managed by Elihu Root; the man who could conceive of putting a non-partisan board of four in charge of any of the great departments of the United States Government; the man to whom it would seem good policy for the Pennsylvania Railway to put a board of four at the head of any of the executive departments, of its vast system, or for the steel corporation to supply the place of Mr. Schwab, or any of the vice presidents under him, with a board of four, — is a man who draws his ideas of efficient administration from other realms of human experience than those in which my life has been spent. If any lesson has been well learned by the conquering civilizations, it is that to secure executive efficiency responsibility must be centralized. I don't know why all this experience of the world should be set aside in the organization of the business of our cities.

Especially ineffective is the scheme of non-partisan boards. I will not repeat what I have said elsewhere on this subject, but those of you who have had the opportunity which I have had of observing the manner in which the non-partisan feature is worked out in governing boards generally, are aware that the appointing power, as a rule, seeks weakness rather than strength in those appointees whom it is compelled to select from the opposite party. It might easily enough happen, under the provisions of this code, that Republican mayors would for a good while be compelled to appoint Democrats, and Democratic mayors Republicans, because the mayor is chosen for three years, and the members of the Board of Public Safety are to be appointed for four years. Political changes of administration might occur in such a way as to bring Republican mayors into office at the time when Democratic members of the board were to be appointed, and vice versa. What a race for imbecility such a scheme would involve, in current politics, can be easily imagined.

The most remarkable feature of this code is, however, its committal of the greater part of the business of our great cities to an independent, irresponsible board of three men, to whom almost unlimited power is given to organize departments, create and abolish offices, appoint and dismiss officials, construct and destroy administrative machinery. The only check upon their action is in the power of the purse which is committed to the council. Any expenditure exceeding five hundred dollars must be authorized by an ordinance of the council. But neither the council, nor the mayor has any power to interfere with or participate in

the great business of organization and administration which is handed over bodily to them. "The board of public service," says section 99, "may employ such superintendents, inspectors, engineers, physicians, district physicians, health and sanitary officers, matrons, wardens, guards, clerks, laborers and other persons as may be necessary for the execution of its powers and duties; and may *establish such departments* for the execution of affairs under its supervision as it may deem proper." Consider what this means: "The board of public service," says section 93, "shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wharves, docks, landings, market house, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship-channels, streams and watercourses; the lighting, sprinkling and cleaning of all public places, and the construction of all public works." And section 94 goes on to say, "The board of public service shall have the management of all municipal water, lighting and heating plants, parks, baths, libraries, market houses, cemeteries, crematories, sewage disposal plants and farms, as well as all public buildings and other property of the corporation not otherwise provided for herein. Said board shall also manage and control all houses of refuge and correction, work houses, city farm schools, infirmaries, hospitals, pest houses, and all other charitable and reformatory institutions now or hereafter established or maintained by any city." And section 95 proceeds to confer upon the same board of public service all the extensive powers of legislation and administration now committed to boards of health in our various cities.

It is a tremendous power which is thus conferred; and the administration of all these vast affairs in any of our greater cities would tax the capacity of any three men who could be found. They would have under them a small army of employes, and their power of appointment and removal is absolute. No merit system nor anything resembling it is so much as hinted at.

I object to this scheme for several reasons:

1. It puts an enormous burden upon the men who undertake its duties.
2. It jumbles together functions which ought to be kept distinct. The public improvements, properly so called, and the charitable and reformatory work of the city, and the care of its health, and the maintenance of its libraries are interests so various and dissimilar that it is unreasonable to unite them in one department and commit them all to the

care of three men. Where could you find men equipped for such a wide range of responsibilities?

3. It puts discredit upon the mayor, making his office one of very little dignity or importance. He is permitted to have some limited part in the administration of the police and fire departments, and he has the veto power over the acts of the council; here his functions practically end. In the great business of the city; in the development of its physical resources; in the care of its health; in the administration of its institutions of philanthropy and of popular education, — in all that is most significant and important in the life of the city the mayor has no part at all. He is not in it; he is not even a figurehead; his presence is not invited, his advice is not wanted; he is a practical nonentity. The board of public service is the whole thing.

4. The most dangerous feature of this scheme is, however, its committal of such enormous powers of legislation to these three men. The power to create departments, to establish and abolish offices, to define and organize official functions is certainly legislative power. This kind of power is committed to this board, within the whole range of its field of administration, with no limitation whatever. Whether such power can be legally conferred on a board of three men is a question which may well engage the attention of our constitutional lawyers. But whether that is possible or not, the practical objection to such a measure is obvious enough. Men who have such enormous tasks of administration as are placed upon these three, ought not to be tempted to desert those tasks for the more picturesque and exciting business of legislation and organization. Much of the time of such a board is likely to be wasted in abolishing old offices and creating new ones; in discontinuing old departments and setting up new ones, in rearranging and overturning and remodelling the entire machinery of administration. Political reasons of a powerful sort will be found for such tinkering, and a pretty large share of the energy of a new board of public service is likely to be expended in making all things new. I ask you as men of common sense whether this is a judicious proposition? If so great administrative powers as are here contemplated were to be conferred on any three men, it would be wise to provide them with a permanent framework of organization, so that they could devote their entire time to their executive duties, without stopping to reconstruct their machinery.

On the whole this board of public service seems to me a grotesque and impossible creation. I cannot imagine that anything resembling it will ever find a place among the statutes of Ohio.

Passing now from the board of public service, let me say that the administrative machinery of the code before us is sadly defective in its lack of recognition of the merit system. I have called attention to the fact that no reference to this system is found in the sections dealing with the board of public service. In the sections relating to the board of public safety there are provisions for something that goes by that name; but I will not assume that anybody expects them to be taken seriously. Such a merit system as is here provided for would be a mere farce. If this is all that is proposed, it would be better to expunge these sections. A treasurer who is empowered to select his own auditing committee has no very effective check upon his operations.

What, then, would you propose? you are asking me.

In the first place I would carefully study, amend where necessary, and adopt the first, second, fourth and fifth chapters of this code. Then I would substitute for the third chapter on the organization of cities a brief outline, providing for a legislative, an executive and a judicial department in every city, and defining, in a general way, the powers of such departments. It might be well to provide that a certain portion of every council should be chosen on a general ticket; and that the mayor, the auditor, the treasurer, and the solicitor, as well as the council, should be elected by the people.

Then I would provide for the calling, in every city, of a representative convention which should have power, under the general laws thus framed, to complete the organization of the city, creating such departments and offices as the condition and needs of that city may require, submitting their scheme, when framed, to a popular vote and putting it into effect when so approved.

But this, you tell me, is impossible. It would be a delegation of legislative power to this convention, and the legislature cannot delegate legislative power. It would be letting some one else organize the city, whereas the constitution says that the legislature shall "provide for the organization of cities." Such, we are told, is the verdict of our great constitutional lawyers, and we must not venture upon a path from which they are warning us.

I am not a great constitutional lawyer, but I know how, logically, to put two and two together; and I will venture the remark that if some of our great constitutional lawyers knew as much that, some of their arguments would be more coherent. You say that legislative power cannot be delegated. I say that whether it can be or can't be, it will be, before you get through with this business. If you obey that prohibition of the constitution which forbids special legislation; and if the Supreme Court is right in saying that cities cannot be classified, then you will be compelled to delegate to somebody or other in every city large powers of legislation and organization.

This measure which we are considering does delegate vast powers of legislation and organization to the three men constituting the board of public service, and permits them to use their powers, without restraint, unlimitedly and perennally. Fully two-thirds perhaps of the business of our greatest cities is given over into the hands of these boards to organize and disorganize and reorganize at their pleasure. If this power can be conferred, by the legislature, on a board of three men, elected every three years, it can certainly be conferred by the legislature upon a representative body elected for the purpose under laws enacted by the legislature, and conforming in its action to the mandate of the legislature.

You have got to delegate this power of organization to somebody. Mr. Guerin delegates it in a little different way, but he gives it away — to his director of public improvements, most of it. The bill before you hands it over to the board of public service. Confer it on somebody you must; for you cannot make a framework that will fit all the cities. The question with you simply is, on whom is it wisest to confer it? Is it safer to give it to the council, or the board of public service, or the director of public improvements to be used by them constantly and at their own discretion, — so that the framework of the city government shall always be undergoing alterations and repairs? or is it safer to put the matter into the hands of a responsible convention which shall take time to fit the governmental garment to the needs of the municipality, and provide methods of administration which may be altered, indeed, when occasion demands, but which shall have a reasonable measure of stability which shall not be pulled to pieces and spliced together again with every change of political administration, and under which we may hope for some reasonable measure of skilled administration?

For my own part I believe the latter to be the sounder, the safer and the more rational method. Mistakes will be made under either method; but I think that the risks are less and the promise greater in the plan which I propose.

If I should be a member of one of those constitutional conventions, I think that I should wish to consider very carefully many of the organic provisions which Mr. Guerin has incorporated in his code. On the whole I greatly prefer his general plan of concentrated responsibility to the plan of government by boards which is here proposed, and there are many features of his bill which deserve consideration. I have not discussed them, because if my argument is sound, the legislature cannot wisely undertake to work out the details of municipal organization, but must leave them to be determined for themselves by the people of each municipality.

This is an opportunity for the Legislature of Ohio to do a great stroke of work for free government in this country. It is an opportunity to emancipate our cities. They have never had their freedom. They have always been creatures of the Legislature, dependent for their very breath of life upon its favor. This is why they have been so badly governed. The sense of civic responsibility has not been begotten and bred in them. They have always been in leading strings. Citizenship does not thrive under such a regimen. Give the cities their freedom. Let them work out their own problems. Let them develop their life on their own way.

Do you say that you cannot trust them? That is the blighting, paralyzing skepticism which kills democracy. You must trust them. You have no one else on earth to trust. Summon them to take up this great business, courageously; put the responsibility upon them, and you will see such an outburst of civic pride and enthusiasm as you have not witnessed for many a long day.

The people of our cities can govern ourselves better than any legislature can govern them. Give them a chance.

The Chairman: Does any member of the Committee wish to ask Dr. Gladden a question?

Mr. Silberberg: Dr. Gladden, in the first part of your address, you stated it would be better to elect all the councilmen at large?

Dr. Gladden: No; I did not propose that.

Mr. Silberberg: And then you said that at least one-third of them should be elected at large?

Dr. Gladden: I said, if I had my way, I would elect them all at large, but that we are not yet civilized enough to adopt that, and that I would therefore elect one-third.

Mr. Silberberg: Would not the same evil exist, there being two-thirds still elected by wards, and one one-third at large?

Dr. Gladden: Of course; but my idea is, if you get one-third of your council to be men of intelligence and capacity, it would result in good.

Mr. Silberberg: Wouldn't it be better to have two-thirds at large?

Dr. Gladden: I think it would be better to have three-thirds at large, but you won't get it; I am talking about what we can get.

Mr. Stage: On the assumption that you are in favor of taking the Comings Bill, or the Nash Code, in the classification of cities, it dividing cities and villages at the line of 5,000, providing that every city shall have the departments provided therein, as well as an auditor and a treasurer, permitting a constitutional convention to frame the rest of it, — the question arises, in the smaller cities, where they would not need a treasurer, the county treasurer performing the duties, where they do not need an auditor, the city clerk doing the work, — in view of that classification, wouldn't you think it would be wise to leave out those two offices and let them be provided for by constitutional convention, if the line should be drawn at 5,000?

Dr. Gladden: It is possible, I think.

Mr. Williams: Doctor, you stated that you did not think the charities and hospitals should be under the board of public service?

Dr. Gladden: No, sir.

Mr. Williams: How would you advise governing them?

Dr. Gladden: I think that when the Constitutional Convention comes to do its work, in most of the cities, it probably will provide for a department of charities and correction; I do not think that is the kind of work which ought to be grouped with the other work, of public improvements, etc. A different kind of men, of different experience and of different ideas, would have charge of, and be interested in that work. A man may be a very good engineer, may have a good deal of experience in street construction and all that kind of work, and yet not be at all adapted to the care of hospitals for the infirm and the poor;

he may not have the experience or the training that would fit him for that kind of work.

Mr. Williams: If I understand you correctly, you stated that the powers granted, in the governor's code, to the board of public service, would be difficult for three men to handle?

Dr. Gladden: Yes.

Mr. Williams: Do you not think that it will be more difficult for one man, if you had the centralized power?

Dr. Gladden: I am not centralizing them in that way; I should divide this first department of public service into three or four departments.

Mr. Williams: How would you have that — elected or appointed?

Dr. Gladden: Appointed by the mayor.

Mr. Williams: Don't you think in that case, that the mayor would be apt to appoint his own constituents, men of his own party, who had helped him obtain his election?

Dr. Gladden: That is very likely.

Mr. Williams: Don't you think, then, it would be better to have them elected?

Dr. Gladden: No; I do not think so.

Mr. Guerin: Doctor, a proposition has been made here in this committee to-day, that this is not the time to provide the power for the city council to grant the use of the public streets, or make restrictions upon their power in granting franchises for the occupation of those streets. I will ask you whether or not from your study, and your opinion in this matter, you would not think that one of the most important matters that should be attended to at this time; that is, whether it is not as important to prescribe the rules and regulations under which the city council, in the interest of the public, may grant the use of the streets, as it is to provide that they may pass ordinances regulating the use of bill boards, etc.—whether this, in your opinion, is not an opportune time to take up that matter, and whether it ought not to be taken up?

Dr. Gladden: I think so, decidedly; decidedly so. I think that that is just one of the matters, one of the things which the legislature can do at once and do once for all; and it is a good time to do it now.

Mr. Price: Doctor, you spoke about a municipal convention. I hold in my hand a brief prepared by Judge West, of Bellefontaine, and he is discussing the corporation and organization of municipalities; he discusses, first, the incorporation; second, the organization. Organization under general laws. He says that the first municipal code that was

written, was written by Judge Thurman and Judge Ranney both. It provides that the corporate authority of the incorporated villages organized, or to be organized, for general purposes, shall be vested in one mayor, or recorder and five trustees, and by section six, above, it was provided, so soon as city officers are elected, corporate organization shall be effected, and not until then was it an organized body equipped for the discharge of municipal functions. In other words, Judge West claims that the legislature determines what constitutes the organization of a municipality, and following his ideas out, there is no objection to putting two municipal councils into the municipality, or, in other words, giving the municipality two legislative bodies; and the idea of your constitutional convention — which would be practically passing an ordinance creating such departments as a specific municipality might need, the general statute specifying the department, and the council then providing, if it chooses, under the law, after the municipality was organized, that the municipal council, or the upper council, should be elected, it would meet and, by ordinance create the departments that might be provided for under the general law, and then adjourn *sine die* and not meet again for ten years — that would satisfy, in my judgment, the requirements of Judge West's analysis here; the other method of the municipal council, first, would not. I only spoke of that; but it looks to me that the simplest form of organization that could be thought of for a corporation, would be to differentiate the executive from the legislative power, in other words, the mayor and the council; but then this legislature could go further, and put in a treasurer and clerk and say they should constitute the organization, according to this.

Dr. Gladden: That is very interesting, and I thank you.

Mr. Guerin: Doctor, I would like to ask you whether, in your opinion, it is possible in any municipality, to have a proper enforcement of the law in the government of the municipality, unless the police department and the fire department and the health department, which pertains strictly to the welfare of the people, shall be removed from politics entirely, and under a board of civil service commissioners, which is free from local partisan influence?

Dr. Gladden: No; I don't think that is possible; I think that it is a necessity.

Mr. Stage: I will ask you, Doctor, if you think that there can be a proper administration of municipal government without the merit system in all departments?

Dr. Gladden: I do not think so.

Mr. Chapman: Doctor, of the forms, or the system of municipal government with which you are acquainted, which is the best form—whether the federal or other systems with which you are acquainted?

Dr. Gladden: I don't quite know what you mean by the federal system. There are a great many kinds of organization abroad in the earth which go by that name. We have always called our government here in Columbus, the federal plan. A very intelligent man said to me only the other day: "I don't believe in the federal plan." I said: "What do you mean?" "Well, the sort of thing we have here." I told him I thought what we had here was a very bastard federal plan; it was adopted and contrived for the purpose of depriving the mayor of as much power as possible, because the mayor, at the time when that bill was passed, was a Republican and the legislature was Democratic; that was the reason, of course, it took all the power away from him. It would not let him be the head of his own cabinet—he never has been. We have had a board of public works, which has been an independent body of three, elected its own president and transacted its own business; the mayor hadn't anything to do with it. That is not strictly the federal plan.

I think that the heads of departments should be appointed by the mayor, and that he should be given the power to hold them responsible. I believe he should be in consultation with them constantly about the business of the city, that he should frequent consultations with them; but I do not believe in what we have here in Columbus—in a board of public works which is partly legislative and partly administrative in its powers; I do not believe in that; I think the powers ought to be separated, and that the mayor ought to appoint the head.

Mr. Chapman: I understood you, in your previous argument, to make some exceptions to the mayor appointing the heads of departments; will you state again what those exceptions are?

Dr. Gladden: No; I do not think that I made any. Did I?

Mr. Chapman: The director of accounts.

Dr. Gladden: No. Well, the auditor, yes. I think that is wise, perhaps. I think it is wise to have both those officers elected by the people, the auditor and the treasurer, if there is a treasurer, so that they can be a check upon each other; that is fair, I think. And I think it is quite important that the solicitor should be elected by the people.

Mr. Chapman: How long a term do you think the solicitor should have?

Dr. Gladden: Well, I am not sure that I would make the term any longer than the terms of the other officers. What I hoped was, that if the solicitor proved to be a faithful and efficient officer and commended himself to the people, he might be re-elected by the people again and again. Of course, if he is appointed by the mayor, he goes out with the mayor every time; there is no question about that; he will be changed, as all solicitors or directors of law have been, in Columbus, with every administration.

Mr. Chapman: You would recommend the merit system throughout the federal plan?

Dr. Gladden: I would, decidedly.

Mr. Guerin: I would like to ask the Doctor one more question: In the event that the General Assembly should decide that they had no power to permit the municipality to choose its own charter or constitution, — in the event it becomes necessary, in the judgment of the members of the Assembly, to pass a code bill on substantially the lines laid down in the board plan, or in the single head of department, I will ask you whether or not, from your observation and experience, you do not believe that a single head of department, appointed by the mayor, we will say in the matter of public service and public safety, to look after the entire department of the city government under him, who holds office only during good behavior, and may be removed by the mayor for mis-conduct in office, or anything of that character, — whether or not, that responsibility, centered on the mayor, and also on the head of the department, without any divided responsibility, would not obtain a better and a cleaner administration of city affairs than we could obtain with such a provision as that made in the Governor's code, — that the board of public service shall consist of three men elected for three years, with the farcical provision about getting them out of office, with absolutely no right for a citizen to demand that he be put out, but allowing him to remain in office during three years; — I ask you whether if, as I have said before, the man's term depends upon the mayor, and upon how he administers his office, we could not have a better government under that system, with a single head, as we have in the national system, that we could have under any board system?

Dr. Gladden: Yes; very decidedly.

Mr. Martin Gemuender was introduced by the chairman, and addressed the committee as follows :

Mr. Gemuender : Mr. Chairman and Gentlemen : I was present at your original organization, and I understood at that time that there were to be sub-committees ; that the various provisions were to be discussed by these sub-committees, and therefore, as my talk will be largely on the financial end of it, I had reserved all my statements for that committee ; but I understand that committee is not to meet, but I have been asked by your chairman to make my address to the committee, as a whole.

Now, I have nothing to say on general principles ; you have heard those matters talked of ; but there are quite a number of smaller items here that ought to be looked after ; there are omissions, and there should be some changes in the wording of different clauses, in order to make the meaning clear.

There seems to be a pretty general notion prevailing that the laws that were passed shortly after the adoption of the original code, form in themselves a pretty complete code which would govern cities without any special addition. That may have been all true. But in the last forty years cities have grown very much ; new wants have arisen which were not thought of in those days gone by. When a new want arose, the city took care of it by a special act, or by amending a general act and making it special, or supplementing it. When you take these repeals and check them off, if you check off all the special acts and the amended general acts, you will have comparatively little left, and you will erase a great many laws which supply details of organization which are absolutely necessary, and which are only hinted at in the code before you.

What I shall have to say is not very interesting, in the shape of a general talk ; but it is simply calling your attention to items that should be changed, in my opinion. Some of these, perhaps, you have already gone over, and if so, you can simply drop those out.

On page 19, section 40, it provides, "On or before the first Monday in March of each year, the several officers, boards and departments in every municipal corporation, shall report an estimate to the auditor or clerk of the corporation, stating the amount of money needed for their respective wants for the incoming year, and for each month thereof. The auditor of the city, or clerk of the village, shall revise said estimates and may reduce them so as to prevent unnecessary expenditures and to bring each within fair limits as compared with the others."

I have had considerable experience in municipal affairs, and I will say, without hesitation, that the auditor has no knowledge that would warrant his interference. He is simply the accountant of his city, and there is no more reason in sending those reports to him than there is in sending the formulas for the foundry to the department which is given to the general manager.

I would amend that section in this way: Insert, after line 454, the words, "except the trustees of the sinking fund." This change is required, because of section 65. That would bring it in harmony with section 65, which provides that the trustees of sinking funds shall, at certain stated times, make their estimate and report to council, which shall place these estimates in its ordinances, in preference to any other item and for the full amount certified. That has been the universal practice of trustees of sinking funds in Cincinnati, Toledo and Columbus for many years.

Section 39 will require amendment; I have placed it here, itemized, so that your committee can take it up for themselves.

On page 19, line 473, the copy I have says, "A statement showing the annual expenditure from each fund for each year for the fiscal year preceding said date."

That is probably an error, as I think it should be "of each year for the fiscal year preceding."

Turn now to page 21. You have provided in those sections how money can be paid into the treasury, but there are no specific directions as to how money shall go out of the treasury. There is no reference or provision that I can see, which provides how money shall be drawn from the treasury. I therefore suggest the following addition. Here in the city of Columbus, we have worked under what is known as our charter law, and the act on which that is based being a special act, that act has been wiped out. I should suggest this addition: "Unless expressly otherwise provided by law, all money collected or received on behalf of the corporation, shall be promptly deposited in the corporation treasury in the appropriate fund, and the treasurer shall thereupon give notice of such deposit to the auditor or clerk, and unless otherwise provided by law, no money shall be drawn from the treasury except upon warrant of the auditor or clerk pursuant to an appropriation by council."

We have here different boards; for instance, our workhouse board; there has been a controversy between that and council as to how bills should be approved, and on whose order it shall be drawn from the

treasury; a clause such as I have suggested, would make that clear; it would give them to understand that no money could be drawn except upon warrant of the auditor or treasurer. There are other provisions outside; for instance, sinking fund trustees will be allowed to handle that money as before.

Page 21, line 527, the wording is rather obscure. I would suggest a period after the word "thereof," and in place of the phrase beginning with "or credits," write "all unexpended appropriations or balances of appropriations remaining over at the end of the year, and all balances remaining over at any time after the fixed charge shall have been terminated by reason of the object of the appropriation having been satisfied, or abandoned, shall revert to the funds from which they were taken, and they shall then be subject to such other authorized uses as council may determine."

After that, it doesn't require any separate resolution or act to bring the money back into the treasury.

Page 22, line 535. Substitute, for the sake of clearness, in place of the word "transferred," "from which a transfer is to be effected." That will make it read "no such transfer shall be made until the object of the fund from which the transfer is to be effected, has been accomplished or abandoned."

Page 22, line 553; Section 2699 and 2702 referred to in this section, in these lines, contain special provisions for Cincinnati and Cleveland; I don't know whether those acts would be permitted to stand.

Judge Thomas: They are to be rewritten.

Mr. Gemunder: Page 25, line 623, is not clearly worded; it says, "nor shall any additional loan for such purpose be made until all previous loans have been paid." Now, if you make a loan in expectation of money to be received, your first loan may be a small loan, and if it is a six months' loan, it will extend beyond the time when the collections are received. Now, you might have occasion to make another loan, but under this wording, you cannot make it, because the first loan would have to be paid, and you cannot pay it because it is not due. I would suggest this: Strike out all after the word "amount" in line 623, and insert: "of taxes and revenues estimated to be received at the next semi-annual settlement of tax collections for said fund after deducting all advances. The sums so anticipated shall be deemed as appropriated for the payment of the certificates at maturity."

In line 625, substitute the words "six months" for the words "one year." I don't think there is any need of carrying that loan beyond the time when you receive your tax collections.

Page 26, line 639 refers to Section 2709, containing special provisions, but I suppose that will be rewritten.

Judge Thomas: That will be redrafted, also.

Mr. Gemunder: Page 26, line 647, after the word "determine" insert the words "the conditions and —" so as to make it read, "and council may by ordinance determine the conditions and method of effecting such exchange." The object of the word "conditions" there is this: Under the law, the municipality must, on demand of the holder of a coupon bond, issue a registered bond, and has a right to charge a reasonable amount for the expense incurred. Now, the word "conditions" there is meant so that if the city desire to change by substituting registered bonds for coupon bonds, they shall have the power to do so.

On the same page, line 653, it provides for the issue of deficiency bonds; it says, "Provided that the total amount of such deficiency bonds issued by any corporation shall not exceed one per cent of the total value of all property in such corporation as listed and assessed for taxation." I don't think that that means exactly that, because that would mean when you have once reached the one per cent point, then you are through. I think they mean, by that, issued by any corporation outstanding at any one time, so that if you will insert after the word "corporation" in line 653, the words "outstanding at any time," the meaning will be clear; otherwise, it would not be a continuing power.

Page 27, after Section 57, add the following: "All premiums and accrued interest received by the corporation from a sale of its bonds shall be transferred to the trustees of the sinking fund, to be by them, applied on the bonded debt and interest account of the corporation." The object of that provision is this: Heretofore, bonds were sold by corporations, and the entire proceeds, including the premium and interest, were transferred into the fund and expended just as the principal of the bond is to be expended. Now, the accrued interest is not a clean gain; it is simply an advance payment, which must be paid out again as soon as the coupons mature. There is another advantage, in my opinion, as matters stand to-day; if you are allowed to issue a bond, bearing, say, up to six per cent interest, you may have \$100,000 authorized; council then, instead of issuing a low interest-bearing bond, in order to get the

large premium will push it up to the highest notch — that is, they can push it up to six per cent and get thousands of dollars extra. If you provide that the premium and interest shall be turned over to the trustees of the sinking fund and placed against the debt, there will be no interest in a municipality issuing high-rate interest-bearing bonds; it will keep the interest down to the lowest notch.

Judge Thomas: There is no provision for that in the Longworth bill, is there?

Mr. Gemunder: No, sir; the amendment came in too late to the bill; but they agree with this principle, thoroughly.

Judge Thomas: Do you think, if that were added to this, it would make it a part of that law?

Mr. Gemunder: It would be a different act. If added here, it would not conflict with the Longworth act at all; it would be supplemental.

On page 27, line 677, and also lines 678 and 679, it provides for the appointment of trustees of the sinking fund, two of whom shall be appointed in one year, none the next and then two again. It provides for two trustees going out every other year. It seems to me it would be better if the law were so drafted that one trustee should go out each year, instead of two every other year; I have therefore drawn up here what I think would be the correct wording for that: "At the first appointment hereunder one trustee shall be appointed for the term of one year, one for the term of two years, one for the term of three years and one for the term of four years, and thereafter as the terms expire, one trustee shall be appointed for four years." It simply makes a less violent change, to have one officer go out each year.

Mr. Stage: I have a letter from a gentleman who suggests that in line 668, after the word "annually" the words "or so long as necessary" shall be inserted.

Mr. Gemunder: Of course, that simply involves this principle, whether you want to levy each year for your debt; that would depend on the good judgment of the trustees, and as a rule they have acted with discretion.

Mr. Stage: They are compelled to collect it annually, under this law?

Mr. Gemunder: Yes; but that does not say to what extent or how much.

Mr. Stage: Sufficient to pay the interest?

Mr. Gemuender: They always do that, and to provide a sinking fund.

Mr. Stage: That is all the flexibility you think would be necessary?

Mr. Gemuender: The only flexibility would come on the sinking fund; the interest must be paid.

Mr. Denman: In line 671, I would like to ask whether you have talked to Mr. Ellis, or any gentleman who drew this code, as to what they mean by "excepting in condemnation of property cases?"

Mr. Gemuender: That is the way the old law reads. Any judgment against the city, such as a judgment for damages is paid by the trustees out of other funds; but if you open a street and condemn property, that appropriation is paid and assessed upon the abutting property, and wherever you condemn property to open a street, the cost is assessed on the abutting property.

On page 28, I would suggest that the lines 685, 686 be stricken out and that you substitute the following:—"and the costs thereof together with all other incidental and necessary expenses of the trustees of the Sinking Fund shall be paid by said trustees out of the funds under their control." I would so amend that section that they could pay these expenses, and all other incidental expenses connected with managing the sinking fund, out of the fund under their control.

Page 29, in line 724, after the word "state," insert the following,— "holding in reserve only such sums as may be needed for effecting the prompt discharge of matured obligations and current items of expense." That places no limit on the amount they shall invest. The law, as it stood heretofore, provided that all money ~~should~~ be invested, excepting \$10,000. Now, of course, in drafting this code, the \$10,000 exception would not be much for such a city as Cincinnati, Cleveland, or Toledo; but \$10,000, in smaller cities would probably be a large sum, and I suggest this amendment to meet these necessities. The idea is to allow the trustees to hold enough ready cash to meet the debts as they become due, and not to compel them to invest everything.

Section 67 here was formerly section 2723; they have changed that; they have cut out entirely the definition of the duties of the trustees of the sinking fund; that is the only section, so far as I have been able to learn, that certainly defined the duties of the trustees of the sinking fund; that has been omitted and we have what you find in this section 67. I

would retain the old section 2723. Preceding section 67, I would suggest the following: "The trustees shall provide for the payment of all interest on the bonded debt of the corporation, of all judgments final against the corporation, except in condemnation of property cases, of all rents on perpetual leaseholds of the corporation not payable from special funds and for all bonds falling due."

Page 29, line 732, I would amend. That does not allow the trustees to deposit with the treasurer, if they see fit, and I should make that read this way: "All securities or evidences of debt held by the trustees of the corporation, shall be deposited with the treasurer of the corporation, or with a safety deposit company or companies within the corporation, or if none exists, then in a place of safety to be furnished by council, as the trustees may elect—" That would permit them to deposit with the treasurer then.

In line 737 of page 30, section 69, "The trustees of the sinking fund shall collect all rents due to the corporation and invest the same as other funds." Now, does that include market rents? That has never been made clear, as to the rents of market houses. We have never collected them here, but you might construe it that way. It is with the legislature to determine whether or not you want to collect those rents; it never has been collected, even in Cincinnati.

Mr. Willis: I don't see why there should be any exemption.

Mr. Denman: They are collected by the auditor in our city.

Mr. Gemuender: Here, it is collected by the market master. That section should be made clear.

On page 30, line 759, we find section 2709 of the Revised Statutes referred to; that is a special act. In line 759, there is the provision,— "and the trustees of the sinking fund shall have power on demand of the owner or holder of any coupon bond, to issue in lieu thereof a registered bond of the same denomination, bearing the same rate of interest, etc."— Now, that is already provided for in section 55 on page 26.

Page 34, line 853, after the word "given" insert "and after the necessary appropriation made, 'making the sentence read,— "And after authority to make such contract has been given, and the necessary appropriation made, council shall take not further action thereon."

Page 37, line 918 in section 86, says "The president of council shall be elected for a term of three years, and shall serve until his successor is elected and qualified:" It does not say by whom he is to be

elected. You will find the same omission as to the auditor, treasurer and nearly all your elective officers. Ordinarily, we would elect the president of the council by the council itself; but I suppose the intention is that he shall be elected by the electors of the corporation.

On page 44, section 97, it says the board of public service may make any contract or purchase supplies or material, or provide labor for any work under its supervision, not involving more than \$500. Now, I would like to ask, how is that to be paid? If it is above \$500, it must receive the sanction or authority of council. There is no provision for an appropriation; is council to be forced into that appropriation?

I will say that I do not want to go into a general discussion, but this board of public service is rather a peculiar organization; it mixes up executive and legislative functions in such a way that I think, unless these sections are very carefully drafted or re-drafted, rather, you will have endless trouble between council and the board of public service. There will be required quite a re-drafting of that section, and probably, also, the section pertaining to the duties of council.

Line 1229 and line 1233 are open to the same objection; I think these are probably oversights.

Mr. Stage: When those sections which are to be re-drafted and made general, are to be re-drafted, that is, 1699 and 2702, which provides for the certification of the auditor that the money is in the fund,—do you think that certificate of the auditor is necessary?

Mr. Gemuender: I think that should be provided.

Mr. Stage: Do you think it would apply to the board of public service there, on the point you have just mentioned?

Mr. Gemuender: Well, I don't know whether it would, because there is no provision for any appropriation for those \$500 expenditures. Above \$500—I suppose they meant by that, the authority must carry with it the appropriation; then the council could not make the appropriation without the proper certificate. Lines 1229 and 1233, I think, have that same \$500 clause in for the department of public safety; the same objection, of course holds there.

Mr. Silberberg: We also thought to make a provision that larger contracts should not be split up into \$500 amounts.

Mr. Gemuender: At any rate, the way the line reads here, they may make a contract of that kind without advertising, provided they are authorized to do so by council.

Turning back to page 46, in line 1159, it reads this way:—"The mayor shall choose two directors." I should amend that by striking out the word "choose" and inserting in lieu, the word "appoint,"—"The mayor shall appoint two directors."

Turn back, also, to page 34, section 78, providing that as to certain ordinances and resolutions,—“No ordinance or resolution granting a franchise, or creating a right, or involving the expenditure of money, or the levying of any tax, or for the purchase, lease, sale or transfer of property, shall be passed, unless the same shall have been read on three different days, and with respect to any such ordinance or resolution there shall be no authority to dispense with this rule.” That may be all right when it comes to questions like granting a franchise, but I do think it would be rather cumbersome, when it comes to ordinary local bills, pay-rolls, etc. It would mean certainly two weeks holding up of the payment of any bill.

Judge Thomas: Do you think the words there “or involving the expenditure of money” would include the pay-rolls?

Mr. Gemuender: Why, certainly. If you compare that section—take line 855, which says “Council shall be governed by the provisions of sections 1694, 1695, 1696, 1697, 1698 and 1699. These say that all resolutions and ordinances of a general and permanent character shall be read three times, unless the rules are suspended by act of council. I think those lines, 846 and 855, will lead to confusion.

Judge Thomas: This language up there from line 842 to 846 is intended as a sort of explanation from 1694, is it not?

Mr. Gemuender: Well, this section says quite plainly that with respect to any such ordinance or resolution, there shall be no authority to suspend the rules; section 1694, says that you may.

Judge Thomas: That is an exception to the general provision in 1694, is it not?

Mr. Gemuender: I don't see why it should be; because the appropriation of money and so on, may be determined to be an ordinance of a general and permanent nature.

Judge Thomas: It says no ordinance or resolution granting a franchise, creating a right, etc., and on those subjects, section 1694 does not apply, as I understand it.

Mr. Gemuender: It may be construed that way, only it is not plain to me; I simply wanted to call your attention to it.

I will simply say, as I started out to say, that a great many of the old acts have been repealed, and I think it will require a committee of revision at the very next session of the legislature, if this code is adopted as drafted. It is very difficult to concentrate, as the gentleman did in drawing this code, and still make the proper provisions.

Mr. Willis: The point has been made here that there is a conflict between section 41 and 45, as to the time of the beginning of the fiscal year; what do you think of that?

Mr. Gemuender: I noticed that same thing, and presumed it meant this: The fiscal year immediately preceding said first Monday of April; I should say that would be the fiscal year, ending on the 31st day of December, preceding; I should interpret it that way, although I do not think it was originally intended to be that way. In some states, the fiscal year does not end then; I think it ends on the 31st day of March, the time of the tax settlements.

Gentlemen, this has not been very interesting to you, perhaps, but it is necessary to call your attention to these matters.—I thank you.

On motion, the Committee adjourned to meet at 9:00 o'clock Friday morning, September 12, 1902.

MEETING OF SPECIAL COMMITTEE ON MUNICIPAL CODES.

EXECUTIVE SESSION.

SEPTEMBER 11, 1902.

The special committee for the consideration of Municipal Codes met in executive session in the Finance Committee Room, Mr. Comings presiding.

The Chairman: Mr. Hypes has just notified me that there are two or three gentlemen present, from Springfield, who wish to be heard on the subject of hospitals. I did not know they were here until we came into this room. I presume there will be no objection to hearing them here.

Reverend Dr. McCabe will speak to us on the subject of hospitals.

Dr. McCabe: Mr. Chairman and Gentlemen: I thank you for the opportunity of appearing before you and presenting this subject in a brief way. I would like to state I am not here for any other purpose than in the interest of the work I represent; otherwise, it is thoroughly immaterial to me whatsoever form of government, or code you choose to adopt. But having been for years on our hospital board, and knowing the needs of it, I ask your indulgence to be heard on that point, and I shall not take a long time in saying what I have to say.

On our hospital board in the city of Springfield, the city has selected representative men, representative citizens; we have obtained the services of the best men we have in our city, who give their time and attention to this matter; all of us are intensely interested and enthusiastic in this work, because it is a work of charity, and merits our best endeavors. In the city of Springfield we are now building, or have selected a site and are commencing a new hospital. General Snyder, a citizen of that city, left the hospital, and also our park board a generous donation, having given us 255 acres for a park and \$200,000 to be entitled a park fund, and \$100,000 as a hospital fund. He said in his will this, which I will read to you, gentlemen:

"I do hereby give and bequeath unto the city of Springfield, in the county of Clarke and State of Ohio, the sum of \$100,000, face value, in

four per cent. government bonds to be selected by my executor hereinafter named, upon the following trusts, namely :

To hold, manage and keep invested the principal of said fund in such manner as now is, or hereafter may be, provided by law for the investment of trust funds by guardians or trustees of individuals, and to use and expend the interest and profits thereof, in the manner hereinafter provided in caring for the sick poor of the city of the said city of Springfield, according to the present or any future boundaries thereof. The said fund shall be kept distinct from all other funds of the said city, excepting only such as it may hereafter acquire in trust for the same purpose; and the management and investment thereof, and the disbursements of its income shall be under the control of the board or committee having from time to time, the management and control of its hospital or hospitals; but no investment, or change in the investment of the principal of said fund, or any part thereof, shall ever be made by said trustee, or by any successor of its, without the written approval of a majority of three persons of good business standing and experience, to be appointed as an advisory committee by the court of common pleas of said Clarke county, or by a judge thereof, in vacation, by an entry made upon the journal of said court, or by such other court, or a judge thereof in vacation, as hereafter may be created by law to exercise the general chancery powers now vested in said common pleas court. Any vacancy occurring in the membership of said committee by death, incapacity, resignation, refusal to act, or other cause, shall be filled in like manner forever; but no person holding any office under said city government, or any political office whatever, shall ever be appointed to such committee, and the acceptance of any such office by any member of said committee, shall terminate his membership thereof. Said committee is expected to serve without compensation for the sake of charity, to guard the principal of said fund, and help to preserve it, and secure its wise and safe investment for the benefit of the sick poor of said city forever; and they shall be entitled at any and all reasonable times to examine and inspect the investments that have been made of said fund, or of any part thereof."

It is in the provisions for this trust fund that no man shall handle this, who holds a political office. Now, we are very well aware, that, if what we read in the newspapers is true, the plan has been to abolish all hospital boards, and put all this in the hands of the board of public service, a board of three men who have all the city affairs under their control. We understand, in the first place, that there may be some little question

as to the provisions of this donation. In the broad sense, anyone is a politician who holds a public office by election of the people, and so that leaves us in doubt as to the terms of this bequest or donation. Of course, the courts might construe that differently.

The second point is this: Our board now gives its entire time to the hospital; they are men familiar with its needs, and interested in that work, and they give their time and study to that, solely. The service is done gratuitously. We do not believe that under the board of public service, you could get three men, who would have the affairs of the whole city under their direction—if they attended to all these things as they should—who would still have time and opportunity for this work, to give it the careful attention it must have. Those men, with all the other affairs in their hands, could not, as anyone can see, give this matter the study and time that these men, this board of representative citizens, who serve the city without any expense to it,—are now doing to look after and direct this matter. In other words, you would mix these things up with the park board and the many other interests of the city. That board of public service is elected by the people, and in the city of Springfield, we all know very well how that city generally goes in such elections—and we are not complaining about that—but you know, that in politics, when a man has been elected, his posture conforms to that position taken by the party electing him. The provision we wish to direct your attention to especially is that one I have read,—“but no person holding any office under said city government, or any political office whatever, shall ever be appointed to such committee, and the acceptance of any such office by any member of the said committee, shall terminate his membership thereof.” Now, under that, our committee is entirely free from politics. Under the elective system, the members of the board of public service, if elected to office, would necessarily be of some political party. As it is now, we have a non-partisan board. I have served on the board two years, and the question has never arisen, and I will say to you gentlemen, we have never taken a vote on any question of moment in that board, that the five members have not voted shoulder to shoulder and heart to heart: there has never been a dissension, or a “nay” vote cast. You mix us up in politics it will change all that. We all know it is the bane of our city government in Ohio, and we don’t want our hospitals mixed up in politics, or with other city affairs; it is a branch of work that is independent of all others, that should be studied by men devoted to that work, and under the care of men who will give their time, whole-heartedly

and generously—who will not be placing a multitude of other city affairs first. I come here, gentlemen to protest against the abolishing of our hospital board.

I am satisfied that what prevails in the city of Springfield, prevails in other cities of the state of Ohio. We protest against the mixing up of these things with the political government of the city, and believe they should be left as they are.

I am very proud of my citizenship in the State of Ohio; I am very loyal; I do not object at all to any code you may form here; the main features of the code, you have, I believe, practically considered, and they are all acceptable to me; I think the details are all that I am interested in, and the portion of those relating to the hospital. I have no unfavorable comment to take on anything you may do, or have done, except to say, gentlemen, that I hope and sincerely trust that you will not mix our hospital up in politics, for if you do, you will surely and certainly cripple and impede the work; you will keep us from doing the work as it ought to be done, you will put a very great inconvenience and great obstacles in our way. This is the subject I came to present to you, gentlemen, and to protest against anything that will interfere with our hospitals in their great service.

Mr. Stage: I would like to ask you, Doctor, if you think that the introduction of the merit system would be of value in eliminating some of the evils of municipal government?

Dr. McCabe: I think, sir, that that would have a great value; I understood you proposed to add that.

Mr. Cole: Doctor, there has been a suggestion made here that we make the board of health, or the hospital boards, independent boards, appointed either by the council, or by the board of public service; understanding the conditions as you do, in Springfield, would that be satisfactory to you?

Dr. McCabe: I will say, Mr. Cole, that my own judgment is it ought to be independent; it is immaterial to me who appoints it; but whichever party is successful, if the board of public service appoints it, then that party has the appointing of our board. If it is left a non-partisan board, you can't bring it into politics, that is entirely apart from it now, as it is. As far as the appointing power is concerned, it is immaterial who appoints it.

Mr. Price: Do you hold your appointment from the Common Pleas judge?

Dr. McCabe: From the Tax Commission, who are appointed by the Common Pleas judge.

Mr. Price: This provides, does it not, for three members appointed by the Common Pleas judge?

Dr. McCabe: No, I may not have made myself clear. Mr. Snyder, in his donation, stated that these trustees of the hospital should not invest a dollar of the principal of that fund, without the consent of a majority of three members of the advisory committee, appointed under the will by the Common Pleas judge.

Mr. Price: They are an upper board, on some things?

Dr. McCabe: On investments, yes.

Mr. Price: The law of the State reposes the power in the Tax Commission of appointing the immediate controlling board?

Dr. McCabe: Yes.

Mr. Hypes: I would like to have Dr. McCabe state to the committee — while he is not a member of the Park board, if in his opinion, the same conditions are not applicable and existing, as to the management of parks, as in the hospitals?

Dr. McCabe: I would say, Mr. Hypes, I think they are; as far as Mr. Snyder's donation of \$200,000 is concerned, the same conditions prevail as in the hospital donation. As far as the park board is concerned, I am certainly satisfied, knowing the character of the men comprising that board, and the satisfactory work they have accomplished, and their interest in the work, that it is giving much better service than if mixed in city politics. I should say so, yes.

Dr. Harry Miller, surgeon of the hospital, was introduced and addressed the Committee as follows:

Dr. Miller: Mr. Chairman and Gentlemen: I don't think I can add any more to what Dr. McCabe has said, other than that I think it would be a mistake to put the hospital under the board of public service.

Having so many interests under one board, I think that some of the institutions would be neglected, and I think that it would be the hospital. As it is now, it is being very satisfactorily managed, and we are making progress there, and I think it would be a great mistake to change it. I thank you.

Mr. Cole: I would like to ask one question: Now, suppose, in the board of public service, or public safety, they should appoint an independent committee, just the same you have now, composed of good, responsible

men, not subject to partisan influence, — don't you think it would be just as well to place the appointment there as in any other body?

Dr. Miller: The board of public service to have power to appoint the hospital committee?

Mr. Cole: Yes.

Dr. Miller: Don't you think it would be just as much, still in the hands of politicians then? We want to eliminate that.

Mr. Cole: It is a difficult power to place, the appointive power, in a public representative, without they are in politics?

Dr. Miller: As it is now, it is so remote from politics.

Mr. Cole: It is my opinion, Doctor, that that board which you have there is entirely unconstitutional, and I think you will find that board will be abolished, and that appointing power must be lodged in some other body; the question is, where? Whether to leave it to council or the mayor, or the board of public service or board of public safety?

Dr. Miller: I think, if that is the case, it would be best in the council.

Dr. McCabe: The trouble in getting another board, is this: These men are all serving for nothing. When they take the appointment, that means they are the board; but if you make it simply a sub-committee, under a board, — that kind of men will not take the appointment, that class of men wouldn't want to serve. If you are going to have the appointive power somewhere — Dr. Miller says council — but I shall fall back on the general principle of my life, that if somebody has got to appoint it, let the appointment come from the top; therefore, I would say, let the mayor appoint.

Mr. Willis: That I am to understand this matter, I want to inquire how the Tax Commission is appointed?

Dr. McCabe: By the Court of Common Pleas.

Mr. Willis: I am not able to see, then, if you had a board of trustees appointed by the board of public safety or public service, or public improvements, by whatever department it may be — I am not able to see why that would not be just as much non-partisan as the board you have now, — I can't see any difference at all. As the Doctor said he did not care especially in whom the appointing power is vested, you would still have your non-partisan board, as much as you have now?

Dr. McCabe: My point was this: If the board of trustees of the hospital should be an under board of some other board, you could not get

the same class of people to serve, as now ; men like some of us don't take those under positions.

Mr. Willis: It occurred to me it was under a board, being appointed by the Tax Commissioner, which is appointed by the Common Pleas court — that is under a board twice?

Dr. McCabe: Let me tell you, Mr. Willis, my point ; it is this: We have been appointed by the Tax Commission, but we are not answerable to the Tax Commission ; it is an independent board. If they were under a board, the board of public service, for instance, they could meet and say to us, "Now, you do this, or we will fire you out."

Mr. Cole: Supposing a provision should be made in the Code, that after the board was appointed, it should not be held responsible to the board of public service or public safety ; it was not answerable to that board for its action, but were to be made entirely independent?

Dr. McCabe: Mr. Cole, it seems to me to be an anomaly to make an appointment of any man, and then say he is not responsible to anybody for his acts — except to God.

Mr. Cole: I would respectfully suggest that that is what the board is now — responsible to no one?

Dr. McCabe: Isn't it responsible to the appointing power?

Mr. Cole: But I understood that your board was not responsible to the appointing power?

Dr. McCabe: No ; it is not responsible to the Tax Commission.

Mr. Cole: Cannot we make that board just as independent of its appointing power, if we have it appointed by some other power — by the board of public service or the board of public safety, or the mayor or council, as it is under the conditions now?

Dr. McCabe: Well, I suppose so. As I told you, Mr. Cole, my choice would be the mayor. Just so that board is not made so that we have to do whatever some other board may choose to tell us.

Mr. Price: How would it do to fix that power of appointment in the Common Pleas judge?

Dr. McCabe: That is all right ; we generally are supposed to get things pretty straight when we go to the judiciary ; that is supposed to be pure in most things ; but it is a city board ; the Common Pleas judge is to my mind, as much of a county, as a city officer.

Mr. Price: He is a district officer?

Dr. McCabe: Yes, and this is a local city affair.

Mr. Price: You don't want to be under a board that is in politics?

Dr. McCabe: Well, I have expressed my idea, that if anybody has to appoint this board, it seems to me the mayor is the man, or the Common Pleas judge; it would be all satisfactory to me; but to my mind, he is not enough of a local man.

Mr. Price: Would you have the council confirm the mayor's appointment?

Dr. McCabe: As we are appointed now, we are bonded for \$2500; the council has to approve our bond, and the mayor of the city and the clerk, have to approve our bond, also. We have an independent board, you see, with no boss over it; we just go on and do our duty.

Mr. Cole: There is one other question I want to ask, or that I would like to submit to the committee: Now, where there is a bequest for a public institution, park or hospital of any kind, and it is specifically stipulated in that bequest that that money is to go to a board of trustees, or some kind of a board, and there is an appointing power in some particular office, like Common Pleas judge, with the provisions of this code as it is amended, or as it may be amended and adopted, interfere with that bequest.

Mr. Guerin: If I understand the question rightly, that is, where there is a private hospital, where there is free service to the public, but established by individuals?

Dr. McCabe: This is owned by the city of Springfield, entirely.

Mr. Price: They have got bequests there that are to be managed by trustees, these to be appointed by a board, the proceeds therefrom arising, especially given to the board of the city hospital, the Common Pleas court handling the money and using it under certain restrictions, — but the proceeds coming to the board of the municipality.

Dr. McCabe: The income from the fund?

Mr. Price: Yes; and trustees are appointed who control and invest that, and after paying the expenses in order to handle it, it is then devoted to the city hospital, and the Doctor here is a member of the city board, instead of being a member of the board of trustees.

Dr. McCabe: I am a member of the board of trustees of the hospital, but not a member of the advisory board.

Mr. Guerin: What connection has the city government with this hospital?

Dr. McCabe: It absolutely and entirely owns it, just as much as you own that watch that you have on, Mr. Guerin, and the trustees represent the city of Springfield.

Mr. Guerin: It is a self-perpetuating board — the will, or bequest specifies the manner in which the trustees are to be appointed to manage this property?

Mr. Comings: To manage the investment, not the fund.

Dr. McCabe: The three advisory members appointed are entirely separate from our hospital board; the only limitation we have is, that we cannot invest any of the principal, except by the consent of a majority of these trustees; they are not the board of trustees, they are an advisory committee under the Snyder will.

Mr. Stage: I think Mr. Price has not the right idea regarding this advisory board. As I interpret this, this fund goes to the city, as trustees, under a committee which may, or not, have control of the hospital or hospitals of the city, who manage and invest and disburse the proceeds of that fund. The only limitation upon their action is, that they shall be especially in charge in the investment of this fund and that there shall be no change in the investment of this fund, except by the written consent of a majority, three, of the persons, in good business standing, to be appointed an advisory committee, by the court of Common Pleas. It seems to me, without going into the legal discussion of that, that the provisions of a code like this, would not interfere with the power given under a specific bequest in such particular case, and whether you appoint the director of public safety to have charge of that — we probably would not, in that case, because it is given to the council, although it might impose that power of management and disbursement of the investment, in the director of public safety — yet, still, in that specific case, or similar cases, the action of the advisory committee would be necessary, or the action of a majority, three, of them, for a change of that investment. I do not believe our plan, or a general law drafted for the government of hospitals, placing them under the care of any particular department, would interfere with the action of the bequest, in the slightest degree.

Dr. McCabe: Some of these lawyers who are better informed than I, might claim that that advisory committee could still exist; others will claim it cannot; the former is my own opinion. At the same time, I call your attention to the fact, that you might know that these questions are to be considered. Now, if you are all satisfied of that, it is satisfactory to us. The only point I maintain is, I do not think the board of public service, or public safety, can do what we are doing, as beneficially, for the hospital.

Mr. Hypes: I will state, for the benefit of the committee, that I had a consultation with the judge of the Common Pleas Court of Clark county, in connection with this matter, Judge Mower, and he felt that as a matter of general equity, there would probably be no disturbing of the holdings of the city, either of the parks or of the hospital. That fact that provision of the will creates an advisory board, has led to the question which has been discussed here; but I was fully aware, at the same time, that it was the general sentiment that Mr. Snyder, in giving these large sums of money to the city, had desired that parks and hospitals, should be kept as free as possible from all partisan politics; and the fact that they made this provision for the advisory board, pointed to that end. I had expected that members of the park board would be here, but, I do not wish to take up the time of the Committee with any further discussion of this matter, as a sub-committee will make a later report.

Mr. Victor Smith, City Solicitor of Springfield, was introduced and addressed the committee as follows:

Mr. Chairman and Gentlemen: I do not know that I have anything more to say on this subject of hospitals, but there are some other matters that Mr. Hypes tells me I am given an opportunity to speak of. I will say this as to the hospitals: The gentleman on my left stated correctly; the board has absolute control of the hospital; the will provides for an advisory committee to have charge of the investment of money given to the hospital; so that any provision you might pass here would probably have no effect upon the provisions of the will in that regard.

Judge Thomas: That would be true, also, of parks?

Mr. Smith: Of the parks, hospitals and libraries of the city of Springfield, all of which came by bequest, and all of which have some special provisions in connection with them.

I might suggest, however, that what, in your code, takes the place of section 1692, that the clause which provides that cities may purchase real estate and hold by gift, bequest or otherwise, might be amended by adding a provision there authorizing cities to make any and all rules necessary to comply with the will under which the bequest may come,—because there may be complication, and some doubt as to the powers of cities, under the circumstances, and you cannot be too explicit in the granting of powers, nothing coming to the cities by implication. That section is on page 4, line 68, where I believe you can advantageously make that amendment.

Mr. Price: What would you suggest?

Mr. Smith: Page 4, line 68, after the words, "control the same," add, "and to make any and all rules and regulations by ordinance, that may be required to carry out fully all the provisions of the will, in relation to any bequest."

Mr. Price: But suppose a man would give you something, and put conditions to it, in case of a gift?

Mr. Smith: I catch your idea now, to make that provision apply to whatever gifts and bequests,—that would be better; insert the word "gift or bequest," making it read "in relation to any gift or bequest."

In regard to this board proposition, I simply wish to say this: I think the Committee is pretty well convinced that there ought to be a separate board for these various institutions. The city of Springfield was organized in 1890, under the law of the bi-partisan board system, under which it is operating. The board of public affairs was at that time given control of all city affairs, administratively, the park board and the hospital board. After a few years it was discovered that it had not worked out properly for either the parks or the hospitals, and in view of that, the law was changed, creating our park board and our hospital board.

Now, politics has been practically eliminated from those two boards; they are run in a manner that is eminently satisfactory to the people of the city. Both boards serve without compensation. They are made up of the best men we have in the town plat; they give their time—they are interested in the work.

One great trouble that was found in the board of city affairs—board of public affairs, as it was called—which would take the place of your board of public service—was this: that board was composed of men versed more in street making, and in public improvements, than in the running of hospitals and parks: their interests were more that way, and they gave practically their entire time and attention to that phase of city affairs. On account of this, the parks and hospitals received but very little and scant attention from them. I might say the same thing, practically, of the health board. Our board of public affairs is also the health board, but in my experience about the city, I have observed this to be the fact, that the board of public affairs in our city pay practically no attention whatsoever to the public health of the city, except when our health officers come before them and talk to them like a Dutch uncle—they have to do that, before the board will get down to that phase of the business. I believe that the grouping of so many departments under

one head will work to the disadvantage of all these special phases of the work of the city. The board of public service will give its attention strictly to the general interests of the city, and not to the special phases of the work. I think that is the universal opinion of the citizens of Springfield; I have heard nothing to the contrary, from anybody.

Mr. Stage: I want to speak of the amendment suggested by Mr. Smith; I have added in my draft of it, the words, "conveyance, will or deed," to make it general.

Mr. Smith: That clause is, I think, a verbatim copy of the present authority in section 1692, but the suggestion of Mr. Stage, is I think, an improvement.

The Chairman: Then this matter will be referred to the sub-committee which was appointed yesterday; they will take it under advisement.

Mr. Stage: Since we are just fresh from a partial discussion of the question of police courts, possibly it would be as well to take that matter up now, in one of its phases, and if there is no objection, I would like to call the attention of the Committee to the question of solving the difficulty that is before us, in reference to the police court for the smaller municipalities, by demarkation line of population.

I find upon examining the census report that the provision for police courts and the election of police judges in cities containing more than 30,000, would leave in nine cities, all of which, with the exception of Youngstown, have now police judges and police courts. Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Springfield, Toledo and Youngstown.

Mr. Metzger: Canton has no police court.

Mr. Stage: Do you know whether it would be wise to establish one there?

Mr. Metzger: I don't think they want it.

Mr. Stage: Canton is 30,667 at the last census; if they don't want it there, you can make the line 35,000, and still take in all the others. Youngstown is 44,000.—That would leave eight cities that would erect a police court.

Mr. Guerin: Mr. Chairman, I think this is an important matter, and I would like to have it referred to a sub-committee, the sub-committee on judiciary, and let them ascertain from the representatives here what their constituents want, and then get up such an amendment as Mr. Stage proposes and submit to this Committee.

The motion is seconded and carried, and the matter is referred to the judiciary committee.

Mr. Price: I would like the committee on judiciary also to consider the question as to whether all persons acting in the capacity of police judges—that would include mayors, where they act as such—whether the legislature has to determine the rule of compensation.

The Chairman: That will also be referred to the Committee on Judiciary.

Mr. Guerin: Mr. Chairman, I want to ask a few minutes of the Committee's time to explain something that I handed in the other day, as an amendment to House Bill No. 14, but which has not yet been printed.

On motion, Mr. Guerin is given an opportunity to explain the provisions of his proposed amendment.

Mr. Guerin: I want the Committee to consider it; it is a matter I inadvertently overlooked in speaking this morning, and it seems to me I ought to bring the matter up at this time.

The matter in question is the subject of the arbitration of differences between street railway companies and their employees.

You will recollect that this proposed amendment specified that before a city council or a village council, or the commissioners of any county, could give a new franchise, or make any extension or renewal thereof, or of any existing franchise, that the company seeking to obtain this franchise, or the grant or renewal, must enter into an explicit agreement, as a part of the consideration for the granting of the franchise; that in case of any difference between the company and its employees, at any time, not only on the line covered by this franchise, but on all other lines of road which it then or thereafter managed, operated and controlled, they were to submit that question to arbitration, if the employees desired that they should arbitrate these matters.

The purpose of the bill, of course, is simply this: The street railway company occupying valuable franchises upon public highways, has entered into a contract with the public. The purpose of the amendment is to see that the company, by its own default, or act, does not place itself in such a position that it will be unable to fulfill its obligation to the public,—that the street cars must be kept running.

In the second place is a matter that is attracting the attention of

all thinking people in this country, that is, the settlement of differences between capital and labor.

You cannot make a law that will compel arbitration, except in so far as the public is concerned in the parties to this agreement,—that is where you have some right to insist that the rights of the public shall be protected.

This provides that if the majority in number, of any employes in any department, or in any branch or division of a railway, shall be unable to settle a difference with the company regarding the terms and conditions of the employment, that they will submit in writing, a paper, signed by all these people, that is, a majority of the employes, stating the questions of difference, their willingness to submit the question to arbitration, and the agreement, upon their part, to abide the judgment of the court that tries this matter; to state that they will continue in the service of the company under the then existing terms of employment, or conditions of employment and continue to obey all rules and regulations made for them, and to perform their duties in the same manner as if the disagreement had not occurred; that they will not strike, in other words. They name an arbitrator and name the time and place for the first meeting of this board of arbitration. The law then would require that this company shall, within three days from the receipt of that notice, which is served on it, appoint an arbitrator on its part. If the company refuse to do that, or if, having appointed an arbitrator, the arbitrator refuse to act within the time prescribed, the council of any city or village, or the commissioners of any county in which the road is in whole or in part, situate, shall, upon application of the arbitrator appointed by the employes, appoint some suitable person to represent the company, and he shall have the same powers as if the company had appointed him. These two arbitrators together shall select a third disinterested person to act as the third member of the board of arbitration. In the event that said two arbitrators are unable to select a third suitable disinterested person, it shall be the duty of the Governor of the State of Ohio, upon request of either of said arbitrators, to appoint a third person. This board makes its own rules and regulations; they can require both parties to give bond for the payment of costs, if any; they have power to compel the attendance of witnesses, and their testimony; they have power to compel the production of books and papers, and it is made their duty to go into this matter and investigate it, and ascertain the reasonableness or the unreasonableness of the claim, as the case may be; the ability of the company

to comply with the demands of the employes, and after affording all parties a fair and open hearing of this matter,—in which the parties may be represented by council—to render judgment, and as between the parties that judgment shall be final for the period of at least one year.

What I believe about this matter is this: In the first place, you cannot compulsorily require the employes to submit to arbitration, if they do not want to; but those of us who are lawyers know there are usually two sides of a lawsuit, and the majority of men of a department of a street railway company, will not enter into any difficulties, unless they have some reason for it; it is optional with them as to whether they will have arbitration or not, but it is not optional with the railway company. It is my belief that if that power is given to the employes, they will be perfectly willing to submit to arbitration, because they will only want what is fair and right.

Judge Thomas: Is there any place that you know, where that system is in force?

Mr. Guerin: I don't know of a single place, no, sir; no place at all.

Judge Thomas: That is compulsory arbitration, isn't it?

Mr. Guerin: It is, in one way; but before the street car company gets the franchise, they enter into a contract that they will settle all questions in that manner, and the public have a right to insist upon the matter: they have an interest in the contract they are making; that is the reason I say it is legal to do this; I cannot see how that is any injustice upon the company—certainly there is no injustice upon the company, and the public is protected, and I believe that the establishment of any such thing as this into law, the enactment of this law, will establish a valuable precedent.

Judge Thomas: How does that protect the public?

Mr. Guerin: It protects the public, and it protects the employes absolutely, so that a great corporation cannot crush them out. It protects the public because the cars of that company, so far as the street car company is concerned, must be kept running. We do not have any coal strikes, where we have a corporation sitting up and saying, "Whether you are right or wrong, you will come to our terms,"—that could not be under this system.

Judge Thomas: Suppose the employes refuse to abide by arbitration?

Mr. Guerin: The court would not permit them, as a body, to vio-

late their contract; but as individuals, they have a right to quit their employment whenever they see fit.

Mr. Comings: Can a court compel a number of employes to abide the decision of the court, unless it is a chartered body?

Mr. Guerin: Yes, undoubtedly; there is no question about it.

Mr. Comings: Has it not been decided otherwise?

Mr. Guerin: No, sir.

Mr. Comings: Isn't that the common opinion?

Mr. Guerin: If they go into an association or organization, and make an agreement or contract, they will be enjoined from violating that contract; but neither this legislature nor any other, has power to say to any man that he cannot quit his employment whenever he chooses; if he makes a contract to work from day to day, he has a right to quit whenever he likes.

Judge Thomas: Mr. Guerin, do you know of any good reason why we should incorporate a thing of this kind in this code?

Mr. Guerin: I know of this reason: that the sooner the legislature of Ohio will take action on these matters affecting the rights of the public, in quasi-public corporations, the better it will be for the State of Ohio.

Judge Thomas: Is there any emergency now?

Mr. Guerin: There is no such emergency, but there is a very good opportunity; the emergency may come at any time; I am not waiting until the horse is out of the barn before I lock the door. I say now is the time to do this, and have it effective now. The greatest political leaders of the day in this nation, are to-day wrestling with this problem.

Judge Thomas: They are not wrestling with the problem of compulsory arbitration.

Mr. Price: This is not compulsory, Judge Thomas; this is by contract.

Mr. Guerin: Let me tell you something, going into a little personal history. As some of you know, I do business for street railway companies, generally, and I want to say to you that I am not afraid that any company will object to a provision in the law like this. The companies want to do what is fair and equitable, generally, but I say to you that whether they do or whether they do not object, I do not care. I say the public has some interest in this business, and that now is the time to pass a law like this, when you have this franchise business in the code before you; you ought to provide for this just as much as you provide for

anything else, and I say to you, gentlemen, that this is the time to take up a question like this, and there is not better time.

Judge Thomas: I want to say this: I am not opposed to arbitration; that is not the idea; but this is an untried thing, and I don't see the emergency to justify us in putting it into this bill.

There hasn't been any contention anywhere; this is simply a theory the gentleman from Erie advances here; and this is especially true, it seems to me, if we do not intend to change the law on the subject of franchises; if we intend to leave the law as it is, then it seems to me this question would not be pertinent.

Mr. Guerin: What is the object in making any other provisions here, about the paying over of money, or this or that thing, that may happen in the future, and the following council, in the future, to do whatever may be necessary, connected with the giving of gifts, or bequests? The emergency is not here, but it may come later. That is the position I take on the question of arbitration. You will remember a few years ago what happened in Cleveland, when they had a railway strike, and I say to you that we don't want to wait until there is a strike; we want to pass a law now, and have it applicable to railway companies in the future, — not wait until there is a strike.

Judge Thomas: We already have a State Board of Arbitration.

Mr. Guerin: A perfect farce.

Judge Thomas: Wouldn't it be better to strengthen the State Arbitration law, put it into that, prove that any employer or his employees would have a right to come in, under the state law?

Mr. Guerin: I am surprised, Judge Thomas, that a lawyer of your learning should make such a proposition; you know and I know that we cannot compel two individuals —

Judge Thomas: I don't make that as a proposition.

Mr. Guerin: You know and I know, that we can't compel two individuals, or two private corporations, to arbitrate differences that exist between them, in any such manner as that. Now, I say to you that we are not compelling street railway companies to arbitrate with their employees. When we say to the company, "We give you this valuable franchise, with the right to use the public street" — and it amounts to an exclusive grant, in every single instance — "we will give you that, but the public must be considered, the public must be protected." We all know how corporations treat their employees, frequently, and we are going to provide against any such thing; we are going to say that if they have any differences, they

shall submit them to arbitration, and the public will be protected in its rights.

Mr. Stage: Without discussing the advisability of passing such an act as proposed, I want to ask Mr. Guerin, why it would not be right and proper, in such an amendment, to give the corporation, as well as the employes, the right to ask for arbitration? Very often, in such matters, public opinion is the one largest factor in the settlement of such disputes. Now, if you compel the company to wait, under such circumstances, until the employes see fit to serve notice on the company, it may serve to cast public opinion against the company; whereas, if they had the same right, under the law, to serve notice on the employes that they are ready to arbitrate, and wish to do so, public opinion would not then be thrown against the company.

Mr. Guerin: Because, as I say to you, I don't think we can compel a private individual to arbitrate, except through courts of law, duly appointed, any difference existing between that individual and anyone else; we cannot legally do that; that man can quit his employment when he chooses, and you cannot stop him; but I do say that it is different with a quasi-public corporation.

Mr. Stage: I am speaking of your particular amendment, Mr. Guerin?

Mr. Guerin: That is the reason I did not extend that same provision to the company to compel the employes to arbitrate their differences, — because you cannot legally do it.

Mr. Stage: But in the last analysis, you cannot compel any of these things, if the employes would not abide by the decision of the arbitrators?

Mr. Guerin: That would be undoubtedly true, but here is my contention: You can compel a body of men who are acting collectively on a certain matter, to act as they have agreed, as a body; but you cannot do that, individually; — that is, you can keep them from taking certain action, as a body.

Mr. Stage: I can't see, however, what harm would arise, even assuming that you cannot compel the employes to arbitrate, in giving the company the right to take the initiative, and saying to the employes, if the employes held off, "Gentlemen, we are ready to arbitrate these differences," and serving notice upon the employes in the same manner as the employes have the right to serve notice upon the company.

Mr. Price: On this subject, I have this to say: That there can be no compulsory arbitration, anywhere, under our constitution, and I have

this further to say, in answer to Mr. Stage, if the gentleman from Cuyahoga desires to hear?

Mr. Stage: I very much desire to hear.

Mr. Price: That there is nothing that will prevent at any time, a company from offering arbitration, even in this amendment proposed by the gentleman from Erie, — nothing that will prevent a company from proposing arbitration to its employes; but the municipality only knows one person in this; it knows the company, or the men, to whom it granted a franchise, which develops into a contract; but the employes are third parties, and neither this legislature, nor the council can have anything to do with those third parties; consequently, the third parties, or the employes, under the circumstances, are the only ones that you can provide for offering that submission. Or, in other words, if you can provide that the company can offer it to the employes — if you do not provide it — they have the same right to offer these terms, and it is of just as much force on the employes, as it would be, if you provided that they could offer it. They have that option, any way, and the law does not make any difference; but a contract of this kind is between the two parties, or a collection of parties — ordinarily, the street railway company, which is an individual in the eyes of the law — and this legislature is casting a limitation upon the council of the city in regard to what it can and cannot do, and it is just as appropriate, under the circumstances, to cast a limitation upon the power of council in granting franchises, as it is to cast a limitation upon any other power that we give them; this whole thing is under consideration, and the judge can give no valid reason why a limitation upon the power of granting franchises, is not a subject for consideration now; and even our honored Governor felt that it was a subject we should place limitations upon, at this session of the legislature, and incorporated it in his bill, and it stands here; and so far as I am aware, the Governor has laid it before us for consideration, and he has taken no steps to withdraw it from our consideration.

At this point, on motion, the committee recessed to 2:00 o'clock p. m.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

FRIDAY, SEPTEMBER 12, 1902—9:00 A. M.

The committee met pursuant to adjournment, all members being present.

The Chairman: The program for this morning is to hear representatives of labor organizations. The House meets at ten o'clock and we will assign the time until then to the representatives of labor organizations. After the house rises we will hear from Judge E. B. King, a member of the State Bar Association committee which was appointed for the purpose of consulting with the state officials on the code.

Mr. Michael Goldsmith, Secretary of the Ohio Federation of Labor: Mr. Chairman and Gentlemen of the Committee—From the standpoint of labor we have contended for a constitutional eight-hour law which will cover everything in the state, counties and municipalities where directly they have the employment of labor. We do not believe in the contract system, but we believe that every municipality should have the right to and should do its own work. We believe if an eight-hour law is good enough for the United States government it certainly must be for the state of Ohio. Now is the time labor should be taken care of in some shape or form that is constitutional. We ask you to pass a law that will pass the test of our supreme court, if it comes to an issue.

Seventy-five per cent. of the wage workers of this state to-day are bona fide legal voters. They are the masses. We ask in their behalf that some law be passed that will make an eight-hour day a constitutional thing. When the representatives of labor go to their employers and tell them they would like to work under an eight-hour rule, the general answer is, "Why don't you start at home; why don't you see that the men you employ yourselves, although not directly but indirectly, get the eight-hour rule before you ask it of your own employers?" And they are right. We must have a foundation, and that foundation we would like to see placed in the municipal code that you are about to pass.

There are a great many more things that might be brought up. We are interested in the convict labor question, a question that is of vital importance to this state, a question that has been handled fairly well by other states. When convict labor competes with good, honest toil, which is being done to-day in the state of Ohio, it practically wipes out of existence a great many firms and a great many working men, because they cannot compete with the labor in the Ohio penitentiary.

Another great question we are vitally interested in is the question of child labor. It has come to pass in this country that the father can stay at home and do the family duties around the house because the child can go out and get a position much quicker than he can; and especially is this so when a child can be hired for from two and a half to four dollars a week, and perhaps less than that, and put up against improved machinery by which he is able to do the work which the father ought to be doing and earning thereby at least two dollars a day.

Mr. Harry D. Thomas, representing the United Trades and Labor Assembly, of Cuyahoga county: Mr. Chairman and Gentlemen of the Committee—There are several things that labor has stood for for a number of years that require consideration by the legislature. Principal among those is the merit system in the employment of help of all kinds by the municipality. We believe it gives better service. At the present time the United States is employing the best of help that can be got because the great bulk of the men who enter the government service have to pass civil service examinations. We believe the municipalities should get the same service from their employes.

Under the present system of contracts inspectors are required to see that the work is properly done. Instead of those inspectors being appointed by reason of their qualification, they are appointed for political reasons, and you will find an iron worker inspecting sewers or a sewer builder inspecting buildings, men inspecting work without knowing anything about it whatever. In most of the cities a large portion of this work is done in a manner that is no credit to the municipality, simply because the people employed in the work, the contractors, are interested only in making it pay and the inspectors, knowing nothing about the work, let it go through in a slipshod manner. In Cleveland within the past year or so sewers have been taken up where it has been found they have been planked on top and they had to be absolutely rebuilt. Some of them had no connection with the main sewers at all and were a menace to the health of the city.

We are not interested in any particular code, but we are here in the interest of measures that we believe are important to labor. An eight-hour law was enacted three years ago that is now before the supreme court, which the circuit court has declared unconstitutional. We believe in making up a municipal code an eight-hour clause can be inserted that can be constitutional, requiring that on all contracts let by the municipality the work shall be done on the eight-hour system. You probably ask the labor organizations, Why is it you want an eight-hour working day? Why not leave the individual free to work what he chooses? We believe every man in this world should have the opportunity to work who wants to, and we find under the present system of working long hours a great portion of the workers are deprived of the opportunity to work, and to give them an opportunity it is necessary to shorten the hours of labor.

Another question is the payment of wages weekly. The wages that is earned by the worker is needed in his home when the week is up. It is none too much at most, and to keep men from running book accounts or getting in debt I think it is necessary provision should be made in the code for the payment of wages weekly to employes of municipalities, and, in fact, it ought to apply to all departments of the state.

Labor has always stood for the municipalization of all public utilities. They believe the people are more capable of doing their own business than these private individuals are. The large cities of Great Britain within the last ten years have been taking their public utilities out of private hands and operating them in the interest of the public. Five corporations in Great Britain within the past year, according to statistics, turned over a quarter of a million in profits, thus lessening their taxes and at the same time giving better service than they could obtain under private enterprise.

We believe a clause should be inserted in the code giving the citizens of any municipality a right at any time by popular vote to own and control the street railways, gas and electric light, telephones, dock and harbor facilities and everything the public requires to use.

The question of franchises is one of the most important questions that has been spoken of by the press during the discussion over the municipal code. We believe public utilities should be operated for the convenience of the public and that if the public owned them they would be extended to a much larger extent than at the present time. While in Cleveland we possibly have no great complaint over the service we

are getting, we believe the profits accruing to the private corporations of Cleveland would benefit the people much better if they were gotten into a public purse than into a private one. The lines would be extended as convenience required and without reference to whether it was a profitable undertaking.

Dock and harbor facilities are needed all along Lake Erie for the large amount of trade that is coming there at the present time. Those of you who represent counties in those districts know what facilities are required. I believe if Cleveland and other lake ports were given the right like Liverpool, Manchester and other of the larger cities in Great Britain where they have spent millions in such enterprises, that the citizens of Ohio could do just as well as they are doing in that country. If any country has found it a profitable undertaking to do its own business, it seems to me the citizens of this country will find it just as profitable.

There has been a great deal said in the press here that there is more tendency to corruption in our municipal government than in the old country governments, and I think that the corruption largely comes, if there is any, from the corporations which are endeavoring to secure franchises and contracts and other profitable enterprises they desire to make money out of. You will find that in almost every large city these questions are coming up continuously, that in almost every franchise and contract there is let there is some job, and the corruption comes from those who have the profit to make out of enterprises of that character. We believe if you want to get rid of that corruption you must first of all get rid of the incentive to corruption, which in this case is the profit that can be secured out of public utilities by corporations.

Another question that has been practically a part of the platform of our United Trades and Labor Council has been that of the municipality having the right to do its own work without the intervention of contractors, such as building sewers, constructing buildings, cleaning streets and all that work that is required by the municipality. Where the city does its own work there will be no tendency to slipshod the work. The city can hire men as cheaply as the private individual and all it is asked to do is to pay the scale of wages required by the various trades.

In making up a municipal code as large a measure of home rule as is possible should be given to cities. We believe the people of Cleveland know best what Cleveland wants. They ought to have the right to legislate for themselves in the matter of public improvements.

You are called for the purpose of enacting a municipal code for the people of Ohio. There are private corporations of all characters here to talk to you to influence you to put articles in that code that will be of benefit to them, and you can show to the people of Ohio when the legislature adjourns whether the municipal code has been enacted in the interest of the people or the corporations.

Mr. Metzger: The statement has been made so often from that platform that what we want is home rule, we want the largest measure of home rule, that I regard that statement as a stereotyped phrase. I would like to have you tell the committee briefly what you mean by the largest measure of home rule?

Mr. Thomas: In the east it has been necessary for cities and villages to come to the legislature for a special enactment to enable them to make public improvements. We believe home rule requires that cities should be able to do this for themselves and should be able to tax themselves for what amount they require to carry out such improvements as they desire and that they should not be required to come to the legislature for the necessary powers. It is those things that I have reference to.

Mr. Metzger: There seems to be a great deal of contention with reference to the organization of cities, whether it shall be upon the federal or board plan, or by powers delegated to a municipal convention, or by some other plan.

Mr. Thomas: I believe first of all I would stand for the charter. Give them the right to formulate their own charter.

Mr. Metzger: You would have the legislature allow them to call a municipal convention to frame a constitution?

Mr. Thomas: Yes.

Mr. Stage: I would like to ask Mr. Thomas what labor organization in Cleveland he represents?

Mr. Thomas: I represent the United Trades and Labor Council, connected with which are 125 locals and about 200,000 members.

Mr. Stage: I will ask you if that organization is in favor of the merit system in all departments of municipal government?

Mr. Thomas: Yes, sir.

Mr. E. G. Johnson, of Cleveland: Mr. Chairman, and Gentlemen of the Committee: I was sent here as a representative, along with Mr. Thomas, of the United Trades and Labor Council of Cuyahoga county. The answer given by Mr. Thomas with reference to the number of people

affiliated with our organization will give you some idea of the number of people we represent.

There is one question that has absorbed the minds of the laboring men for a good many years, and that is the question of getting the working day down to an eight-hour system. It is true there have been eight-hour law passed and those laws have been declared unconstitutional. Nevertheless, it is also a fact it is not the law itself that is unconstitutional, but it is the construction that is placed upon the law after it is passed. The eight-hour system can be made constitutional. It is constitutional in other states and it works very nicely under the federal government. Nobody has ever raised a question as to its being constitutional with the federal government.

If you let the cities have the home rule you are talking so much about and let them put into the charters of the various cities the points which they wish to carry out, those representatives who do not live up to the wishes of the people in any particular community can be administered a lesson.

There is no question in our minds that eight hours is sufficient to perform all the labor required at the present time. With the improvements in machinery somebody should get the benefit of them besides the man who represents the capital. We are willing to divide, and we want some of it. We believe the eight-hour system will give the men a better chance to study the questions of government and make a better government of the people.

On the question of compulsory arbitration, we have always advocated arbitration and we still stand on that ground. Organized labor never refused to arbitrate, it is always the other fellows who say they have nothing to arbitrate. If you put a clause in the code whereby compulsory arbitration can be put into effect, the wage-workers of the state of Ohio would feel under obligations to the present legislature.

Mr. Stage: When you speak of the eight-hour system, do you mean a general law making it impossible for any man to work more than eight hours, or would there be some flexibility to that. You would not want to infringe on a man's liberty to work more than eight hours, would you?

Mr. Johnson: The eight-hour law I have reference to would be applied to all public work, whether it is a contractor who is doing the work or whether the city is doing it itself. I think that could be stipulated in the contract strongly enough so that they would violate the contract if they violated that particular clause.

Mr. Price: I don't want the working men to feel that the legislature is unwilling to give them what they ought to have, but the right of contract is the fundamental principle on which our government and our civilization is based. Suppose you are a union man and I am a non-union man. I go in a municipality and I want a contract to work for ten hours. You say you want a contract to work for eight hours. It is hardly possible under our constitution and our make-up of civilization to put any provision in that would prevent me from making that kind of a contract. While you maintain the right to contract yourself for eight hours, I maintain the right to contract for ten hours. Do you see the point?

Mr. Johnson: If there is a law passed that a clause could be put in the contract that the work shall be done at the rate of eight hours per day, I do not see anything objectionable. One thing you will admit: Organized labor never in its existence tried to lower the condition of their fellow man, whether he was a union man or not.

Mr. Price: I voted for your labor law two years ago, and when I voted for it I believed at the time it was unconstitutional, but was willing to give it a trial.

Mr. Johnson: I don't believe that law would be declared unconstitutional by any particular individual who had to come up and ask the public for re-election to any particular position he was holding at that time in that particular district where he declared the law unconstitutional; and as long as they don't declare it unconstitutional the law is all right. There are several states that have the same law. In fact it is just as unconstitutional as it is in Ohio, but they know the people won't stand for them to declare it unconstitutional, and consequently it is a constitutional law.

The Chairman: We will now hear from Hon. John N. Hinkle, Mayor of Columbus.

Mayor Hinkle: Mr. Chairman and Gentlemen of the Committee: We had a little experience here a few years ago of the board system and as a result of that system we had really no order whatever and we have got to-day a debt of about eight million dollars. When we had the board system we had as many heads of the city as we have boards. Under the Nash bill, as I understand, we will have one board elected by the people and the mayor elected by the people. That gives just four heads to the city, with nobody responsible. If you have four heads to the city you cannot have harmony, that is impossible, because there

were never four heads ever elected by the people that thought alike, and they are responsible to no one, each will lay it on the other.

I am bitterly opposed for that reason to any boards whatever. As the mayor of the city is held responsible for the city's finances he should have the full power of appointing the heads of all departments. He should also have the power to remove them at any time if they don't carry out his plans of government, and appoint somebody else that will. I have a board on my hands now that claims I have no power to remove them because they were appointed by a former mayor. If I had power to remove them, as I claim I have, I would have a good board in there and save several thousand dollars to the city.

There is only one board I know of in the city of Columbus that is non-partisan, and that is the library board. No politics ever enters it. We have a board here called the civil service board, the worst partisan board on earth. We have three different governments for the three parks, and three different superintendents. The members of the board get no pay, of course. The management of one of our parks we are compelled to leave under the council, because it was given to the city by will on that condition. I would advise that parks be all put under one government, I do not say a board, or what, but put them together so that they can all be combined and make the management as cheap for the city as possible.

Mr. Guerin: I would like to ask you how the civil service board you speak of is appointed?

Mayor Hinkle: It is appointed by the mayor.

The Committee then took a recess until the rising of the house, which met at 10:00 A. M. On the Committee coming to order again at 10:15.

The Chairman introduced Judge E. B. King, as follows: The committee in the last two weeks has been discussing constitutional questions. Various opinions have been expressed. Various questions have arisen that we should have the advice of some well-balanced legal mind upon, and I think it very wise indeed that the sub-committee has asked Judge King to speak to us this morning on some of the phases of constitutional law which have arisen in the discussions before this Committee.

Judge King: Mr. Chairman and Gentlemen of the Committee:

I am here by your kindness and courtesy to discuss two questions connected with municipal legislation as affected by the constitution of

the State of Ohio, and do not care to discuss general propositions involving the plan to be finally adopted. By way of preface, however, I do not hesitate to affirm that if the legislature will put into the code an efficient merit system, one that would seem to be enforceable and effective, I believe that the federal plan so-called, that is, the appointment of single heads of departments by the mayor, would be preferable to the selection of boards. I say this, notwithstanding I agreed in connection with the committee appointed by the Ohio State Bar Association and the governor of the State and his advisors, upon the plan embraced within the bill offered by Mr. Commings at this session. The conclusion reached in that bill, of two boards in place of three, as originally designed; of having one appointed by the mayor and the other elected by the people, in place of having two boards appointed by the mayor and one by the governor, was essentially the result of a compromise. That compromise, however, did not change my original conviction that with the merit system enacted, single heads of departments would be better than boards.

I know that some very worthy gentlemen look askance upon a merit system. They imagine and believe it will interfere with party organization. For thirty years I have been as active and earnest as my business appointments would permit, in the support of a political party and its principles, and have endeavored to be in my support, as practical as possible, but am unable to see from the standpoint of practical politics, where the spoils of the municipal administration have advantaged any political organization more than temporarily. As the municipal government so directly deals with such a large number of individuals; with more than half the population of the state and all their property interests, that it seems to me a business view should be taken of this question rather than a political one, and I would even forego some advantages my party might gain if the people, as a whole, secured beneficial business-like administration of municipal affairs.

But upon this subject enough. Let us turn to the consideration of a question which is, I understand, giving you gentlemen a good deal of trouble and is not likely to be solved with your adjournment. It is likely thereafter to bother some people. I have come here with the idea that beyond question, I am right in my conviction, nor that there is no doubt of the position I take, nor have I had opportunity thoroughly to investigate the subject, having only been able to give a few hours' time yesterday to a special consideration of the topic; but am here to throw out such suggestions as occur to me; to say to you that I believe I am

right and leave you to hear the balance of the discussion and form your own opinion upon this question.

I am told it will facilitate the consideration of your work and a conclusion upon it, if it be understood that the legislature may grant to the municipalities, or which is almost the same thing, the legislative body of the municipality, discretion to have or not to have certain parts of the organization designed for cities. In other words, if you can delegate to the legislative body of the corporation, the right to have boards or single heads of departments; to have one head or half a dozen, you have remitted this question to each municipality to determine for itself, and relieved yourself of the burden of determining upon the plan that shall fit the largest and the smallest city in the state.

It is my opinion that the legislature cannot delegate the power of organization to anybody. It is this proposition I desire to maintain. If it can delegate it, it can delegate the whole of it. Not only is the proposed measure prepared by the State Board of Commerce constitutional, but the legislature might even go farther and enact a law that should confer upon the inhabitants of each municipal corporation, the power to devise and put in operation any form of municipal government, such inhabitants might desire, subject only to the conceded limitations which the constitution imposes upon the legislature, respecting the power of taxation, assessment, borrowing money, contracting debts and loaning its credit. There is no half way house that can be said to be a stopping place between these two points. If the legislature can permit the municipalities to determine whether the organization shall be by boards or single heads of departments; whether of one or more, it can commit also the question whether the municipality shall have a council, a mayor, a police court or an auditor. In other words, it can commit the whole question of organization to the people of the municipality and they can determine the form of government they shall have. They may provide that their municipalities shall be governed by a board, who shall exercise legislative, administrative and judicial functions; that the board shall consist of three or any other number. They even may decide that one man, chosen by the people, shall issue edicts and proclamations, which shall have the force of ordinances, and shall enforce them. Force of habit is, no doubt, strong, and I do not assume that any municipality would design that sort of government. They would generally follow, in the main, the forms that have hitherto been in use. They would hardly undertake to abolish the mayor or the council. I only make the

statement because it is the logical end of the view that any power of organization whatever may be committed to the discretion of the municipality.

What are the constitutional provisions that may be looked to, to determine this question?

ARTICLE II.

Sec. 1. The legislative power of this state shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

Sec. 20. The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers, but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.

Sec. 26. All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except such as relates to public schools, be passed to take effect upon the approval of any other authority than the General Assembly, except as otherwise provided in this constitution.

Sec. 27. The election and appointment of all officers and the filling of all vacancies, not otherwise provided for by this constitution or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the General Assembly, except as prescribed in this constitution and in the election of United States Senators; and in these cases, the votes shall be taken "viva voce."

Sec. 28. The General Assembly shall have no power to pass retroactive laws or laws impairing the obligation of contracts; but may by general laws, authorize courts to carry into effect upon such terms as shall be just and equitable, the manifest intention of parties and officers by curing omissions, defects and errors in instruments and proceedings arising out of their want of conformity with the laws of this state.

ARTICLE 13.

Sec. 1. The General Assembly shall pass no special act conferring corporate power.

Sec. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.

Sec. 6. The General Assembly shall provide for the organization of cities and incorporated villages by general laws and restrict their

power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

I omit the article in relation to the judiciary.

Mr. Thomas: Does the second section of Article 13 apply to all municipal corporations, in your judgment?

Judge King: Yes, sir. The supreme court have never directly said that, but the language is not different than the first section: "The general assembly shall pass no special act conferring corporate power." It was originally argued that that applied to private or quasi-public corporations, like public service corporations, and did not apply to municipal corporations, but the supreme court has over and over again held it was just as applicable to municipal corporations as the sixth section of the same article, which expressly authorizes the general assembly to provide for the organization of cities and incorporated villages. I know of no reason why the second section is not as applicable to municipal as to private corporations.

Mr. Thomas: Is it your opinion, then, that section 6 is merely a qualification of sections 1 and 2 of article 13; that is, that while the legislature may permit private corporations to organize in such form as they see fit under general laws, under section 6 the legislature must go further and provide the organization?

Judge King: Yes, sir. Section 2 has never been construed by the legislature to be different than section 6. There is not a statute that was ever passed in the state of Ohio relating to private corporations that did not go forward and tell how they must be organized since the adoption of this constitution, but they must be organized under general laws. So that all the general laws relating to private corporations provide for the organization.

The advocates of this discretionary power cite a large number of decisions of the courts in Ohio, some of which at least, imply that such power exists, and I desire to refer briefly to some of these.

In *State vs. Clerk of Chillicothe*, 7 O. S. 355, the city of Chillicothe established a water works system, provided for and elected a board of waterworks trustees by ordinances duly passed, and subsequently abolished the board by a repeal of the ordinance authorizing it. A gentleman elected to the office of water works trustees brought suit to compel the clerk to issue him a certificate of his election. It was refused by the court, on the ground that the city having established it and dis-established it by a repealing ordinance, it not appearing that anything

had been done under the ordinance establishing the waterworks or that the city had any waterworks that required the services of a board of trustees, or not having done anything under its original declaration or intention, it had a right to recall that and repent, if it chose. Nothing is decided in that case as to the power of the city to establish water works or not, as it pleased, and elect a board of water works trustees or not, as it pleased. But had it so decided, I am not here to contend that the decision would have been wrong.

In *State vs. Covington*, 29 O. S., 102, we have one of the most important of the decisions of the supreme court holding an act relating to Cincinnati to be a special act, and not one of a general nature, and holding that it was constitutional in that it did not confer corporate power and was not an act of a general nature and, therefore, it was not required that it have a uniform operation throughout the state. It was an act relating to the police force of cities of the first class, having a population of 200,000 or over and did apply only to Cincinnati; and provided for the appointment of a board of police commissioners by the governor.

I can find no reason why that act was not constitutional, if it did not as the court violate the provision of the constitution forbidding the conferring of corporate power by a special act, or was not in conflict with Sec. 6 of Art. 13. There is nothing in the opinion or judgment affecting this question one way or the other.

The case of *Smith vs. Lynch*, 29 O. S. 261, was brought to restrain the collection of a tax assessed by the Board of Health of a village upon the plaintiff's lands, to pay the expense of removing a nuisance from the same. It was claimed the ordinance establishing the board of health was not read on three separate days and that the yeas and nays of members of council were not recorded in voting for a suspension of the rules, and that a majority of the members did not so vote; also that it was not a local board. The case was tried in the Superior Court of Cleveland, went by appeal to the District court and was dismissed by the District Court on the ground that the Superior Court had no jurisdiction of the action. That question was also in the Supreme Court.

Judge Welch, Chief Justice, on page 263, says: "The questions are: First—Had the Superior Court jurisdiction?

Second—Are the requirements of the statute as to the manner of passing an ordinance mandatory or are they merely directory?

Third. If these requirements are mandatory, are the persons so acting to be regarded as a Board of Health *de facto*?

We are satisfied that the last named of these questions must be answered in the affirmative. It is unnecessary, therefore, to consider the first and second questions."

And the court held that these were officers *de facto*. The court says the board was created under a statute authorizing the council to establish the board and to fill it by appointment. The statute in question is section 303-325, constituting chapter 23 of the municipal code, passed in 1869. This chapter related to boards of health.

The court further says in the opinion upon the question whether the members of the board of health were officers *de facto* (that is, holding under color of title):

"True, until the council act in the premises, it is a mere potentiality in their hands; yet, it is none the less, an office known to the law and provided for by the law. Where the council assume to establish the board under the law and to appoint its members, there is no good reason why an irregularity or illegality in the act of establishing the office, any more than an irregularity or illegality in the appointment of the officers, should be held as rendering the acts of the officers void, and themselves mere trespassers."

I read this much for the purpose of showing that the court refers to the discretionary power of the council to establish the board and it is not a reality until the council act by establishing it. It then becomes a real thing. If irregularity crept into the passage of the ordinance, that left members of the Board of Health thereafter appointed, as *de facto* officers, because they were in office pursuant to the state law authorizing the council to establish the board and pursuant to a defective ordinance establishing the board in that particular municipality.

The case of the State vs. Heinmiller, 38 O. S., 101, is cited, but does not seem at all to bear upon this subject. The city council of Columbus established, by ordinance, the office of fire engineer, which it was authorized to do by law, and one was appointed by the mayor; charges were filed against him and he was suspended, and the defendant, Heinmiller, appointed in his place, and his appointment reported to the council, as well as the suspension of the former engineer; and the action of the mayor in suspending the former engineer and the appointment of Heinmiller was not approved, and the

question was, whether the council had a right to pass upon that suspension and approve or disapprove it. Section 1749 authorized the mayor to suspend any officer appointed by him under the authority of any law or ordinance, for sufficient cause, and appoint a person to fill the temporary vacancy, and also that he should report the suspension and cause thereof and all appointments to the next meeting of the council. The court simply held that the disapproval by the council terminates the vacancy caused by suspension.

Mr. Price: This was a suit in quo warranto?

Judge King: Yes, sir; I think it was.

Mr. Price: Then, if I understand quo warranto right, the relator had to show he had a better right and title to the office than the man who was in; and didn't the court oust Heinmiller and put the relator in?

Judge King: It certainly did.

Mr. Price: Does not quo warranto bring up the question as to who has the title to the office and the constitutionality?

Judge King: The parties might have but did not bring up the constitutionality, but did bring up the title to the office.

Mr. Price: The question of constitutionality is raised all the time?

Judge King: It was not in question or discussed in that case. The question was whether the council had any power to disapprove the suspension as well as confirm the appointment. It was conceded they had the power to vote on the confirmation of the appointment, but it was claimed they did not have the power to disapprove of the suspension, and therefore there was a vacancy.

Mr. King: Would the court oust a man from an unconstitutional office when there is no office in fact?

Judge King: Yes, but I will answer that question this way: The office of chief engineer of the fire department, being established by a general law, was a constitutional office, but was not a part of the organization of the city. These men were simply agents of the people to take care of the fire department. They were not governing powers. They had not any power whatever to contract. They had not any power whatever to govern the city. They had not any more authority than the lowest fireman in the grade had, except as they had it for discipline and organization and control of that particular department.

Mr. Price: Were they officers of the city?

Judge King: Yes, sir; they were.

In *State v. Anderson*, 45 O. S., 196, it is decided that in the organization of the city council, as provided for by section 1676 of the Revised Statutes, where the council consisted of six members, and A received 3, C 2, and H 1 vote for the office of president, A was legally elected.

Gordon v. The State, 46 O. S., 607, is a decision holding constitutional, the local option law passed in March, 1888. I find nothing in it that bears upon the question here involved.

The case of *State v. Bryson*, 44 O. S., 457, is another case relating to the appointment of a fire engineer in the city of Columbus. It contains nothing new beyond what is found in the case of *State v. Heinmiller*.

The Satte v. Gardner, 54 O. S., 24, decides that in a prosecution for offering a bribe to an officer, who is acting as such under a statute providing for the government of a municipal corporation, the defendant cannot question the constitutionality of the statute. *Gardner* was indicted for offering a bribe to the city engineer of Akron and demurred to the indictment on the ground that the city engineer was filling an unconstitutional office. The demurrer was sustained and the defendant discharged. The prosecuting attorney took the question to the Supreme Court. Two questions were presented: Whether the act providing for the municipal government of the city of Akron was constitutional and whether, if unconstitutional, the question could be raised in this proceeding. The latter question is the one upon which the decision of the majority of the court turns. The opinion in the case was by Judge Bradberry. Judge Spear felt the question important enough to write a concurring opinion. The substance of both is that, although the statute creating the government for Akron was unconstitutional, still that question could not be raised in a proceeding in a case in which one person was charged with attempting to bribe an officer created by that unconstitutional law. The Court were not unanimous in deciding the case.

I observe, however, this language in the opinion of Judge Spear, on page 45:

"The Constitution recognizes municipal corporations and *authorizes the General Assembly to organize them* and adopt methods by which they may be provided with officers for their government. The office in question in the case at bar, is one which may be so provided; in effect, therefore, the Constitution creates the office."

The judge made those remarks in comment of the case of *Ex parte Strang*, 21 O. S., 610, in which *Strang* sought to avoid a conviction by

the police court of Cincinnati, claiming that the person before whom he was tried was not the police judge, but was an appointee of the mayor under an unconstitutional law, the judge being temporarily absent, and in which the court had decided that it was sufficient if the judge derived his appointment from one having colorable authority to appoint, and that an act of the General Assembly, though not warranted by the constitution, would give such authority. Judge Speer, on page 47, further says, speaking of the case of Norton against Shelby county, 118 U. S., 425, which went up from the state of Tennessee, that in that case, there was according to the holding of the Supreme Court of Tennessee, no power in the legislature to authorize the appointment of county commissioners, with such powers by any form or statute. "while in our case, the power to create a board of city commissioners for Akron is unquestioned, and if the proper classification has been prescribed, no one doubts that it is a board *de jure*."

Again on the same subject, on page 53, the judge says:

"By the act in question, local governments are erected in the cities coming within the description and the necessary officers are provided to carry on the government in those localities."

The dissenting opinion in that case is based principally upon the authority of the Supreme Court of the United States in the case referred to by Judge Speer. It is not necessary that we here now attempt to reconcile conflicting views, as they have no bearing upon the question before us.

In the State *vs.* Mulvihill, 13 W. L. B., 569, decided by the Court of Common Pleas of Hamilton county in 1885, it was held that under the statutes of the state, an office of wharf-master could be filled by election. Contention arose from apparent conflict in the statutes. One section, that of section 444 of the municipal code of 1869, provided that council might appoint a wharf-master, while section 64 provided that all appointments of officers of municipal corporations created by law or ordinance should be made by the mayor and all others should be elected by the people.

I have, so far as I know, covered all the decisions which bear upon this question to which my attention has been called, and I may concede that while none of them are expressly in point, some of them seem to imply power on the part of the legislature to invest the municipality with the discretion to create offices, when and as it may deem best. Yet not one case in Ohio can be found passing upon this question distinctly.

Again, if there could be found such a case, it is an assumption to say that we are to be guided by them.

You gentlemen are brought together in extraordinary session. Why? Because after more than fifty years of legislation and decision, it has been found and the highest court in the state has held that the doctrine established by the decisions of the court and acted upon by twenty-five legislatures, have been based upon a wrong consideration of the constitution. If this consideration has been wrong as relating to classification and the conferring of corporate powers by special acts, why not wrong upon the question of organization? I concede that not only has the Supreme Court not decided this question in behalf of the view which I present, but they have never decided its opposite, and so far as decision goes, in view of other decisions already made in the Toledo and Cleveland cases, are now at liberty to determine, if the question be raised, entirely *de novo*, the constitutional question.

Now, upon what is based my conclusion in this matter? Upon the language of section 6, Article 13 of the constitution, in connection with the other clauses of the constitution. Section 6, of Article 13, has never received judicial consideration in Ohio. This is a curious fact, but it stands there as a constitutional provision that has never been called to the attention of the court by anybody. The cases that have been cited, where there is an allusion to this subject of appointment or discretionary power, have been decided upon the assumed existence of the right by both the counsel and court.

"The General Assembly shall provide for the organization of cities * * by general laws;" in my opinion, that means that the General Assembly shall provide the plan of organization. It shall provide for their organization. The constitution did not say that the General Assembly should provide that cities might organize, but it said that the General Assembly should provide for an organization by the cities, by general laws. It also said it should pass no special act conferring corporate powers, and that all laws of a general nature should have uniform operation throughout the state.

Judge Spear says, as quoted above: "The constitution recognizes municipal corporations and authorizes the General Assembly to organize them and adopt methods by which they may be provided with officers for their government."

Had he added to this, "by general laws having a uniform operation throughout the state," he would have expressed the entire constitutional

provision upon that subject. The constitution does recognize municipal corporations and it does authorize the General Assembly, by general law, not exactly to organize them, but to provide a plan of organization for them, which the people put in force and organize.

Now, then, the plan to be devised, so far as it comes within the term "organization," in my opinion, must be by general law, uniform in its operation throughout the state upon all subjects amenable to it. The Supreme Court have apparently determined that the classification of municipal corporations is the classification provided in the constitution, cities and villages. These are the two classes. The law, then, that must have a uniform operation and be general, must apply to cities, another may apply to villages and may differ in its terms and forms and plans from that applicable to cities, for it must be general as to cities and general as to villages. Whatever is essential to the plan of organization, is the thing that must be general and uniform.

Now, there are many things which the municipal corporation will be called upon to do, varying in locality, in physical environment and in population, and many other things, and it may be said that a law in detail providing the number of agencies and agents that are necessary to carry out a plan or municipal organization, cannot be the same in Painesville as in Cleveland; in Bowling Green as in Cincinnati. Conceded, but these are details. These agencies and agents are not a part of the form of organization. There lies the distinction. It is organization to provide that a city shall have a mayor, and if you provide for a mayor, then you must provide for one in every city in the state and you cannot provide that the council or the people may have one, or not, as they decide. If you provide for a council of either one or two bodies, you must provide the same in every city in the state, and in my judgment, if you provide an administrative department, that is the department that is to carry into force and effect the laws of the state and the ordinances passed by the council. You must provide a head for that and the manner of its selection. If you divide that administrative part of the government into subdivisions of equal authority and have two or more heads, you must provide for those and for their selection by general law. That is organization.

Now, when you have classified the city; its legislative, its judicial, its executive, and its administrative head or heads; have provided how many divisions there shall be in the administration of the city affairs; established the form of the head and the manner of his selection, you

have gone as far, in the organization part, as in my judgment, it is at all necessary under the constitution, to go. These may be authorized to employ such agencies as the exigencies of the times, the necessities of the people, the population, the situation, the surroundings, physical and otherwise, any or all may require. You can say in your code that the council may provide provisions in relation to health. You must have that department under some supreme head, however, which you have denominated. In other words, if you put it in a division which you have made in your code, it is discretionary if you establish it with a separate and distinct head it must be mandatory.

Now, what are these discretionary officers? Chief engineer of the fire, and chief of the police departments; city civil engineers; street superintendents or commissioners; superintendents of the water works; superintendents of the infirmaries; librarians, if you have libraries; wharf-masters; inspectors of perhaps a dozen different varieties and kinds and all the army of employes of different grades, which may be required in these different departments, according to the necessities thereof.

I read occasionally that it is an impossibility for the legislature to provide a plan of government that will govern the largest and the smallest city effectively and well. I do not believe it. I believe that if the plan is not too cumbersome, that it can be made effective in the largest as well as in the smallest city. How are these private corporations or quasi-public corporations managed with a single head? Transportation companies covering the continent and having as many as 20,000 employes and more are governed from a single general manager's office. Manufacturing corporations with a billion dollars of capital? No city in Ohio is assessed to that amount or a third of it. Why, then, should this plan be so elaborate in departmental heads that it cannot be economically adapted to the city of 5000? Why cannot the simplest form of organization be made sufficiently strong to practically and economically govern the cities of Cleveland and Cincinnati.

Judge Spear says in his concurring opinion above referred to, page 53:

"Governments are erected in cities coming within the description and the necessary officers are provided to carry on the government in those localities."

The act he was considering was special, no doubt, and unconstitutional, but had it been general and come within his definition that the governments were erected by the legislature and the necessary officers

provided by general law to carry on the government, the act would have been constitutional. It would, in other words, have fulfilled the requirements of Section 6 of Article 13.

Now, because of this, I say you cannot constitutionally confer upon the municipality, the right to create administrative departments and appoint or elect administrators thereof, but you can just as easily and simply say that there shall be a mayor who shall be the head of a city, to look after its wants and requirements. There shall be a council to legislate for these needs and the work of organizing and maintaining the fire or police or board of health, if you please, shall be placed in a department under a single head, who shall be responsible for their management. Elect him by the people or appoint him by the mayor. It is not too much work for one man. Men in private business are found every day and you can find them in every city in Ohio that when the obligation is put upon them, will have no difficulty whatever in successfully carrying out the management of such a department. You can say that the department of public service shall include the streets and the sewers, docks, wharves, if there are any, or waterworks and cemeteries and such other things as may exist, and shall be under the control of one man. Give it whatever name you please. It is a department. If you subdivide and make another department out of it, you must provide another head, but what you want is heads of these administrative departments.

You have a department of accounts and you must provide a head. These men are to be elected by the people or appointed by the mayor, as you may determine, or part of them in one way and part in the other, but such a plan, I have no hesitancy in affirming, can be made successful in every city in Ohio and when adopted, it will be entirely constitutional. While if you say that the Legislature may or may not have this, that or the other department, invites not only attack but almost the certainty of the destruction of the work of this General Assembly.

Mr. Price: I want to ask whether there have not always been among the bar of Ohio a great many lawyers who thought that the classification adopted by the first code as well as the second code and sustained by our supreme court was a forced construction of the constitution, or a reading into the constitution of something that is not there?

Judge King: I think that is true. I can only say, quoting from second hand, that I know that judges of the supreme court of the state who sat in the court and concurred in the opinion in *Walker vs. Cincinnati*, in 21 Ohio State, authorizing the city of Cincinnati to build a rail-

road, said, and I have heard it reported that every one of them said before he died, that the decision and the opinion in that case was wrong and contrary to the constitution.

Mr. Price: The power of council to bring into life an office when authorized by the legislature to do so having been before the court in so many cases, in three cases, where the constitutionality would come up perforce direct, and no lawyer in those cases having ventured to raise the question when such office was created under a general law, isn't that a pretty good evidence that the bar of Ohio, as well as the courts, have gone on the settled presumption, almost, that that could be done?

Judge King: If you mean that they could create offices which are not a part of the municipal organization and not essentially to enable any city to go forward as a corporation, I think probably that is true; but I don't think that the bar of Ohio will to any great extent say that the question of organization could be submitted to the discretionary power of the city council.

Mr. Price: Suppose the first code that was passed had a provision for a mayor and five trustees and a recorder and thereupon declared, in effect, that that constituted the organization of the municipality. Who determines the point of limitation between organization and that which is not organization?

Judge King: The court after the legislature. The legislature has the first right to determine. If the legislature does it by a general law having a uniform operation throughout the state, that is organization.

Mr. Price: Suppose we would pass a general law complying with the requisites of the constitution and differentiating the executive from the legislative powers in the municipality,—in other words, creating a mayor and a council, the mayor having the executive head and the council being the legislative body, and declared the municipality is organized. Is it organized?

Judge King: I think it is, if you say so. The point I make is that you must make it uniform, adopting now the language of the supreme court which is that that means it must have a uniform operation upon all subjects of the same class.

Mr. Price: Suppose we pass a general law saying in all municipalities of the state where a municipality owns a system of sewers the council shall by ordinance create the offices of sewer commissioners, not fewer than one and not to exceed five in number. What do you think about that being constitutional?

Judge King: I say it would not be because you have undertaken to provide that the cities may organize. You can establish if you please a general sewer department. If you do that, you must provide somebody to run it. Or you can do what nearly all these codes that I have seen do, put the sewer department under some other head. Then you don't need to say anything about it, except regulating the manner in which contracts shall be made and assessments made. The council, with that kind of a code, could go to work and establish any kind of commission it pleases to take charge of the management of these sewers.

Mr. Price: What is the difference between the office of sewer commissioner in a municipality and the fire engineer?

Judge King: I think there is a great deal, although, perhaps, that is a matter that may bear debate.

The second question to which I desire to call your attention is upon the necessity to pass a remedial or curative statute. How far the decisions of the court are going, in over-turning vested rights, in annihilating proper investments, may be impossible to prophecy. It is clear however, that it is very likely considerable harm will be done. I do not expect, I do not desire to ask this honorable body to undertake to reverse the courts of the state. I am convinced that the faults resulting from the classification of cities in Ohio has grown to be so great that to return to constitutional first principles was demanded, but we cannot overlook this truth, that the Supreme Court of this state has repeatedly decided just such classification to be valid enactments. And thereby it has established in the state of Ohio a rule of property, based upon the decisions of the highest and ablest courts, a condition that should not be overturned except upon great and overwhelming public exigency. The doctrine upon that point is called the doctrine of *stare decisis*, meaning, To abide by, or adhere to decided cases.

"When a point has been settled by a decision, it forms a precedent which is not afterward to be departed from."

The rule is,

"To abide by former precedents, *stare decisis*, where the same points come again in litigation, as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion, as also because, the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, has now become a permanent rule, which it is not in the breast of any subsequent judge to alter or swerve from according to his private judgment, but accord-

ing to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain the old one."

Brooms Legal Maxims, 7th Ed., 147.

It was said in 15 Wis., 691, that

"Where a decision related to the validity of certain modes of transacting business, and a change of decision would necessarily invalidate everything done in the mode prescribed in the former case, this maxim becomes imperative and no court is at liberty to change it.

"An erroneous decision subsequently overruled, though the law of the particular case, and binding on the parties in that case, does not conclude other parties having rights depending upon the same question."

52 Minnesota, 59.

In Fisher vs. Roricon Iron Company, 10 Wis., 355, the constitutionality of a mill dam act which had been previously sustained, came against before the Court, which said:

"We are now asked to depart from that decision. Ought we to do it? It is the duty of this branch of the government to pass finally upon the construction of the law and determine whether the legislature in each action has transcended its constitutional limits; and the community has a right to expect with confidence that we will adhere to decisions made upon valid arguments and due considerations. The members of the court may change entirely every six years, and if each change in the organization produced a change in the decisions and the different construction of laws under which immediate rights and interests have become vested, it is easy to see that the consequences will be most pernicious."

And they declined to reconsider the constitutionality of the act. It is also said that the courts will be extremely reluctant to pass upon any laws which have not in any way received, since their enactment, legislative sanction. At any rate, the reason for not doing it will be considered as to the length of time the law has been in force, the numerous decisions under it and the hardships and injustice likely to arise from any change, and whether the good resulting would be more than counteracted by the mischief and harm which would follow. As is said in the Supreme Court of the United States in

Pollack vs. Farmers' Loan and Trust Co., 157 U. S., 429-574:

"Doubtless the doctrine of *stare decisis* is a salutary one and to be adhered to upon all proper occasions, but it only arises in respect to decisions upon the points in issue."

That case involves the constitutionality of the income tax case, and was decided in 1894. To the same effect is the opinion of Chief Justice Marshall in

Cohens vs. Virginia, 6 Wheat., 264-299.

Fearne on Contingent Remedies, page 264, in the edition of that ancient and able work published in 1881, says:

"If rules and maxims of law were to ebb and flow with the taste of the judge, or to assume that shape which in his fancy best becomes the times; if the decisions of one case were not to be ruled by, or depend at all upon former determinations in other cases of a like nature, I should be glad to know what persons would venture to purchase an estate without having first the judgment of a court of justice respecting the identical title which he means to purchase? No reliance could be had upon precedents; former resolutions upon title of the same kind could afford him no assurance at all. Nay, even a decision of a court of justice upon the very identical title would be nothing more than a precarious temporary security; the principle upon which it was founded in the course of a few years becomes antiquated; the same title might be again drawn into dispute; the taste and fashion of the times might be improved, and on that ground a future judge might hold himself at liberty (if not consider it his duty) to pay as little regard to maxims and decisions of those who went before him."

In Kerney vs. Buttles, 1st O. S. Reports, Judge Ranney says:

"It is very evident that the simplest justice to our predecessors, as well as the public, should prevent us from interfering with decisions deliberately made, merely because differences of opinion might exist between them and us upon doubtful and difficult questions of contract. And when, as in this case, the decision has relation to large amounts of a species of property which assumes a value in the market, changes hands, and is dealt with upon the confidence reposed in the correctness of the highest judicial tribunal in the state, nothing short of the most urgent necessity to prevent injustice, or vindicate clear and obvious principles of law, would justify us from departing from it."

It is said in Black on Interpretations of Laws, page 34,

"That the principle of *stare decisis* applies with special force to the construction of constitutions, and interpretations once deliberately put upon the decisions of such an instrument should not be departed from without grave reasons; hence, when the meaning of the constitution upon doubtful questions has been once carefully considered and

judicially decided, every reason is in favor of a steadfast adherence to the authoritative interpretation, and especially is this so when the question is not simply as to the constitutionality of the law, but involves the validity of contracts, the protection of vested interests, the rights of innocent parties, or the permanence of a rule of property.

Maddox vs. Graham, 2 Metc. (Ky.) 56.

I present these statements of courts and law writers for the purpose of impressing the proposition that in Ohio contracts had been made based upon decisions relating to the classification of cities, and the passing of laws in relation thereto under which the statute authorizing the granting of a franchise to public service corporation applicable to a city of a certain grade and was supposed to be constitutional for fifty years in the history of this state. I refer to franchises because that question is now uppermost but there are no doubt many other contracts of a like nature and interest in the different cities of Ohio, that if not now effected, may be hereafter by decisions such as that recently rendered by the Superior Court of the City of Cincinnati in relation to franchises of the street railway company of that city. If these laws or any of them are held unconstitutional, then it is true that the effect, as stated above, "The validity of contracts, the protection of vested interests, the rights of innocent parties, and the permanence of a rule of property," will, in my judgment, fully justify the action of this legislature in going as far as it can in remedying such defects. The constitutional provisions above quoted, Sections 28, Article 2, authorizes certain legislation of this kind. It provides that no retroactive laws or laws imparting the obligation of contracts shall be passed, but that the legislature may correct mistakes or cure defects, etc. How far the legislature may go in that direction may be somewhat questionable. But it would seem that a law rendering valid contracts entered into while the unconstitutional law was in force, unquestioned, ought to stand as high in the opinion of the courts as the attempt to bribe an unconstitutional officer, if I may use that expression, as held in 54 O. S., page 24. Remedial statutes generally are to be liberally construed by the courts and upheld, and given such construction as will best advance the remedy provided and help to correct the mistake against which it is timed.

Black on Interpretations of Statutes, page 307.

Hudler vs. Golden, 36 N. Y., 446,

Welter vs. Paine, 1st O. R., 251,

Hogett vs. Wallace, 28 N. J. Law, 523.

State vs. Blair, 32 Indiana, 313,
 State vs. Canton, 43 Missouri, 48,
 Cullerton vs. Mead, 22 Calif., 95,
 Jackson vs. Warren, 32 Illinois, 331,
 Spraué vs. Lawrence, 33 Ala., 674,
 Brown vs. Pendergast, 7 Allen (Mass.), 427,
 Railroad vs. Dunn, 52 Illinois, 260.

"Remedial statutes are those which are made to reduce such defects and abridge such superfluities of the common law as arise either from the imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of learned (or even learned) judges, or from any other cause whatsoever."

Ist Blackstone Commentaries, 86,

Endlich on Interpretations of Statutes, 107.

Where a law authorized a municipality to print its public notices in four newspapers of the corporation, was afterwards so amended as to provide they should be papers having Associated Press reports, a contract was entered into with one newspaper under the original act, which did not have Associated Press reports and continued in force three years after the amended act was passed, when another act was passed attempting to legalize and confirm the printing of municipal notices in such papers. It was held that it should be given the meaning the legislature intended, where such meaning did not effect vested rights or change existing contracts, and in that case might be retrospective as well as perspective.

Peoples vs. Spicer, 99 N. Y., 225.

It was held in Butler vs. Toledo, 5 O. S., 225,

"That the reassessment of an invalid assessment, made under an amendment to charter, was a valid law, not in contravention with the constitution of 1802."

The provision in that constitution was slightly different from the present one.

Section 16, Article 8, Bill of Rights.

No *ex post facto* law nor any law impairing the validity of contracts shall ever be made. Under this it is held that retrospective laws that violated no principle of common justice, but that on the contrary were in furtherance of equity and good morals were not forbidden in this constitution.

Trustees, etc. vs. McGaughy, 2 O. S., 152,

Lewis vs. McIlvaine, 16 O. R., 347,

Johnson vs. Bently, 160 O. R., 97,

Bartholomew vs. Bently, 1 O. S., 37,

Kearney vs. Buttles, 1 O. S., 363,

Bates vs. Lewis, 3 O. S., 459.

"And it is held that statutes which are remedial in their operation, even though acting on pre-existing rights, obligations, duties and interests, are not within the mistake against which the present constitution is intended to guard."

Green vs. Campbell, 16 O. S., 11,

Rareden vs. Holden, 15 O. S., 107,

Goshern vs. Purcell, 11 O. S., 641,

And many other cases cited.

Applying these principles more particularly to the question before us, we have a case where millions of dollars have been invested, and a large number of people are interested, and it is proposed to pass an act retrospective in its operation, not undertaking to overrule the court or render valid an act that has been held invalid, but simply proposing that where a grant and rights of a franchise has been made under the provisions of law and which has been accepted, and money invested on the faith thereof, shall be regranted for the unexpired portion of the term of such grant. It is not certain, let me say right here, that the decision of the Superior Court of Cincinnati would be ultimately upheld as applied to the street railway corporation, or that the law is constitutional under the decisions already made by the Supreme Court of Ohio, but it is not conceded that because it is unconstitutional that therefore no rights have been vested. A state or government has a right to enact a law compelling the discharge of an obligation for which it has become morally obligated and received the benefit, although the obligation was incurred under an unconstitutional law. A very recent case is that of an insurance company against the board of commissioners, 106 Fed. Reports, 123.

It seems that the legislature of Ohio, in April 1893, passed an act authorizing the commissioners of any county, containing a city of the first class, second grade, to borrow money and issue bonds therefor, for the purpose of building and furnishing an armory for the use of the Ohio National Guard. This applied to the county of Cuyahoga only, and it determined to build such an armory and it borrowed \$225,000 and issued bonds therefor, which were sold at par in that year. The plaintiff after-

wards became the owner of many of them without notice of any infirmity in them; afterwards the action was brought to restrain the levying of taxes to pay such bonds, and it was decided in

Hubbard vs. Patrick, 54 O. S. 456,

that the law under which they proceeded was unconstitutional. Thereupon the legislature in 1898 passed an act, now 2834c, authorizing the commissioners in such a case to fulfill the equitable and moral obligation of the county and reimburse the holders of the bonds, and for such purpose might issue and sell an equal amount of bonds, and providing that should the commissioners fail upon the written request of the holder of any such bonds for six months to make provisions under that act, then the holder of any such bonds should have a right of action in any court of competent jurisdiction. The plaintiff made such demand which the board refused, and thereupon brought suit in the Circuit Court of the United States, Northern District of Ohio, to which the defendant demurred, claiming that the last named statute (2384c) was unconstitutional as being in violation of Section 28, Article 2, and of certain other sections and articles. On hearing the demurrer, it was sustained by the court and carried to the Sixth Circuit Court of Appeals, and there decided by Judge Severe, Justice Harlan of the Supreme Court and District Judge Thompson. A review is had there of the cases in Ohio upon this subject which is of some interest, but too long to quote. The argument of the court proceeds along the lines, showing that the purchasers of the original bonds ought not to be charged with negligence in not anticipating that the law would be held unconstitutional. Applying that to this franchise statute, could any person have imagined in 1896, when the Rogers law so-called was passed, as it was on April 18th of that year, that the courts of Ohio would hold that act unconstitutional? In view of the fact that the Supreme Court of Ohio in a decision rendered on June 23, A. D. 1896, 55 O. S., pp. 1 and 8, said, "The power of the General Assembly to classify cities, enact laws applicable to particular classes so formed, cannot now be successfully questioned. It should be regarded as *stare decisis*."

The right of the legislature to pass such a curative act is based upon the principle that the legislature has the right to cure a wrong or relieve against that which would otherwise operate prejudicially to an individual or individuals.

State vs. Hoffman, 35 O. S., 445-446.

The constitutional provision, section 28, article 2, is designed to prevent retrospective legislation injuriously affecting individuals and thus protect vested rights from invasion.

New Orleans vs. Clark, 95 U. S. 634-655.

Cumler vs. Silsbee, 38 O. S., 445.

Mr. Price: I wish to you would turn to section 99 of the Nash code: "The board of public service may employ such superintendents, inspectors, engineers, physicians, district physicians, health and sanitary officers, matrons, wardens, guards, clerks, laborers and other persons as may be necessary for the execution of its powers and duties, and may establish such departments for the administration of affairs under its supervision as it may deem proper." If you were advising the board rather than the council, how would you establish such departments. What method of procedure would you advise them to take?

Judge King: I am not sure whether there is any limitation in their power to do that elsewhere or not outside of that section. If they have the power to do it, it is done exactly like any business man would do it in a like situation. He would appoint a general manager or superintendent or some man for it. I don't think a resolution would be at all necessary. I think he could just do it. If it said the council should do it, I should say it should be done by resolution or ordinance, because the council keeps a record of its proceedings. I don't think there is any provision that this board should keep a record.

Mr. Price: Do you think section 99 is constitutional?

Judge King: I think it is.

Mr. Price: Suppose we provide that the board of public service shall provide for the election or appointment of such superintendents, etc. Is that constitutional?

Judge King: I don't believe it would be constitutional for them to provide for the election of superintendents. But I should say that with a good deal of hesitation.

Mr. Price: This gives the legislature power to provide for the appointment or election of officers. The constitution says that the legislative power is vested in the general assembly. Another section says that the general assembly shall create the offices and fix the compensation thereof. Another section says that they may provide for the election of officers either by appointment or election. Now, if we can delegate the authority in the first section quoted, why can not we delegate the authority to appoint or elect as they please?

Judge King: I will tell you why: In the first place its organization. Secondly, the legislative power is put in the general assembly. It creates, I assume it creates, a department of the city government to provide the legislation necessary for that. I say it can not confer that kind of power upon any other department, unless it says so in this law, and that the authorization to elect officers by the people would be legislative in its character and that that would be the defect in that idea. That these people may appoint agents to assist them in carrying out their duties, is clearly within the constitutional lines. You could not have a government run very long without that power.

Mr. Price: Is not that going to the farthest extreme of what you would call constitutionality?

Judge King: That may be so. I am no prophet or son of a prophet as to the future of the constitution in the hands of the court. I can only gather the light I have around me at present.

Mr. Price: What is the difference between putting the power under section 99 in the board of public service and of delegating that power to the whole body of the people, making the whole body a board?

Judge King: I can only say as to that, that is part of the organization, and if it must be by general law, the law must specify it. If it is not to be provided by general law, if that is something that we may guess at, then you can delegate it to the people and let them exercise it just as they please.

Mr. Price: Make a board out of all the inhabitants that reside there?

Judge King: Yes. That would be regarded, however, as impracticable, unless we are to be governed by the initiative and referendum.

Mr. Price: And yet it is left to the people whether they incorporate or not?

Judge King: Yes.

Mr. Thomas: Last winter there was a law introduced by Speaker McKinnon, which was enacted, which reads as follows: "That whenever any officer or officers, board or boards of officers, of any county, township, city or incorporated village, have by resolution, ordinance, order or other proceeding, and in pursuance of any statutory legislation of this state, authorized or caused any county, township or municipal bonds or other obligations or instruments to be issued or executed and delivered, or any county, township or municipal contracts, grants, franchises, rights or privileges to be made or given which were valid according to any rule of judicial construction and adjudication of the state

and prevailing at the date of any such action or proceeding, and loans or other things of value have been effected or acquired or expenditures have been made by other parties in reliance upon such construction or adjudication, then and in every such case said bonds, obligations, contracts, franchises, rights and privileges and each of them, shall be deemed and held in all respects valid and binding notwithstanding such rule of judicial construction and adjudication as to such other similar legislation shall have been subsequently changed."

Do you think under that provision that a franchise which has been granted under a law which is afterwards declared unconstitutional would be valid as between the person who has obtained the franchise and the city which has granted the franchise to such corporation?

Judge King: I don't know. I am afraid it is not broad enough. It might be so.

Mr. Thomas: That says where they are valid according to a judicial construction. Would that be sufficient where there was no judicial construction?

Judge King: It would if it could be construed that the judicial decision made was the one relating to the principle involved. That is, if the principle which renders this law defective is that it is a special act applying only to this subject, that principle has been involved in a great many cases. The law itself was never passed on, I suppose?

Mr. Thomas: No.

Mr. Willis: A few days ago some gentlemen who were specially interested in the library question proposed to add at the end of line 162 of the Comings bill: "And the council may by ordinance provide for the erection and equipment of the necessary buildings and the custody, control and administration thereof by trustees who shall be appointed by the mayor and may confer on such trustees such powers and authority as it may deem necessary in the establishment, maintenance and operation of such libraries." Do you hold that such trustees might be mere employes and agents of the council and therefore such provisions would be constitutional?

Judge King: Yes, agents of the city, but I would leave out the word "establishment" in the last line. If there is any difficulty with that amendment, I think it could be very easily remedied. I am not prepared to say whether there is or not. I would not want to answer that question now.

Mr. Cole: The chief difficulty we find in the preparation of a plan of government is to get something that is elastic and can be applied to the small cities as well as the large. The smaller cities don't want a big board, and the larger ones can handle it very nicely. Could you make the number of members of the board of public service or board of public safety dependent upon population, just the same as you do the council; say in towns of 25,000 to 30,000 there shall be a single head and for every 50,000 over that there shall be two more, or some such proposition as that?

Judge King: You could take your chance on that. I have no opinion to offer on that. While I had something to do with the idea of making the council based on that, I do not insure its validity. It may not be good for anything. If it is, I do not see why you could not do the same thing in other departments.

Mr. Cole: If it is valid for councils, it is valid for boards.

Judge King: I should think so.

Mr. Guerin: I have been requested to ask you in what form a curative provision could be adopted affecting everything that might be injured by reason of the overturning of the prior decisions of the supreme court if this law of Mr. McKinnon's that was just called to your attention should be declared unconstitutional.

Judge King: I don't know but that is as good as this, if it includes all the subjects that might possibly arise.

Mr. Painter: If every time the courts declare a law unconstitutional the legislature, not overruling the decision of the court, passes a curative act taking away the effects of that decision, would it not have a tendency for companies to get franchises and issue bonds under legislative enactments that they then knew or believed to be unconstitutional, basing their action upon the fact that afterwards they could come into the legislature and have a curative act passed that would save them from any loss?

Judge King: I don't think the question is a legal question, it is a question of public policy, and it would hardly occur to me that any individual or corporation would find any advantage in applying to one legislature to pass an unconstitutional law and then come back and apply to another legislature to ratify it, as they would make the question twice over instead of once to get what they wanted. The legislature in every instance ought to consider — and it is that upon which those things are upheld — the moral obligation that it rests under. If there is any

moral obligation the legislature may pass any such law. It rests wholly upon that moral obligation to make valid as far as you can the acts of inadvertence which cause damage to innocent persons from the passage of an unconstitutional law.

Mr. Painter: We passed a law last winter that perhaps anticipated an unfavorable decision on the constitutionality of some law, and immediately upon the legislature convening in extraordinary session we are asked to pass another curative act. Now, it seems to me if we continue this thing that the legislature will go into the curative act business and every time a court renders a decision against the constitutionality of some law where it affects an issue of bonds or the financial condition of some corporation the legislature will immediately be asked to pass a curative act to protect.

Judge King: There may be something in that proposition. I don't know whether the act passed last winter would have any effective force or not. The doctrine upon which the Cuyahoga county law was upheld is thus stated in the case reported in 106 Federal Reporter, page 123:

"If the legislature has power to recognize a moral obligation of the state, it has power to recognize a moral obligation of the county. Confessedly there is no other depository of such power. The legislature judges for it what moral obligations it should satisfy. It is its representative for that purpose; and, having determined the obligation to exist, it is manifest that the levy to satisfy it must be made upon the county, and, further, that the purpose is a local one."

Now, where we find those cases they are passed to supply or make effective some individual case that has arisen and the individual has actually suffered, has actually been put in that situation. That creates a plain and palpable moral obligation to put that man back where he was as nearly as possible. Whether you can pass a general act to apply to all cases that may thereafter arise in the state on account of the invalidity of any statute or not, is a question I would not want to be asked to answer, for I could not now.

Mr. Painter: I believe the court in its decision in the Rogers case bases its decision upon decisions that were rendered 'way back in the judicial history of the state, as far back as 1864 and 1856?

Judge King: I have not read the decision, but I understood the ground was that the act was special and conferred corporate power.

Mr. Thomas: You have stated that the curative act probably ought to refer to a particular case, and, as I understand you, a curative act

ought to be passed in each case where it is found that the moral obligation exists?

Judge King: The cases decided each arose in particular cases, but a general act, based on an existing situation, would effect the purpose.

Mr. Thomas: Suppose we find ourselves in Ohio in about this situation, that a good many laws have been passed which were based upon the classification of cities wherein a good many franchises have been granted and a good many cases where bonds have been issued, which, on account of classification may be declared unconstitutional, and a general law is passed, for instance, such as this act in the last session, which applies to acts that have passed and not to acts in the future, would not such an act be valid and binding?

Judge King: I don't know why that would not be good. If I were going to draw such a law I would put in a preamble reciting some of the known and patent reasons for passing it to express the intention of the legislature just why they acted. I don't know why such a law as that should not be good, based on the phraseology employed in this act.

Mr. Thomas: Suppose it was in view of what the supreme court likely would do?

Judge King: It becomes then an idea and not a fact. If you know an existing fact you could pass the curative law and say because this is so or has happened the legislature, to cure that, enacts so and so.

Mr. Price: Do you consider that the constitution provides for a complete state government?

Judge King: Oh, yes.

Mr. Price: Then when the legislature creates the office of mine inspector —

Judge King: Why isn't that right. All the legislative power the people have is committed to the legislature. Mr. Price: You don't consider we are still further organizing when we do it?

Judge King: No.

Mr. Thomas: Do you think a provision in any bill that we would pass like this would conflict with the constitution: "All cities and villages hereafter created shall be organized under the provisions of this act, and all existing cities, villages and hamlets shall reorganize under the provisions of this act. All municipal corporations which, at the last federal census had a population of five thousand or more, may be cities. All others shall be villages?"

Judge King: Most certainly I think that is unconstitutional.

Mr. Thomas: I will read a little further: "All cities which at any future federal census shall have a population of less than five thousand shall become villages. All villages which at any future federal census shall have a population of five thousand or more may become cities." Do you think that that is unconstitutional?

Judge King: I do.

Mr. Thomas: You think you could not provide two forms of organization, one for cities and one for villages, and then say any municipal corporation might choose whichever it pleases?

Judge King: I think you have got to lay down a line of division. Now, whether it would be competent to say that a village hereafter attaining to the line of demarkation may or may not pass into this class is, I think, a slightly different question than the one whether you will permit any of the cities now existing in the state to be cities or villages or not, as they choose. I don't think, for the reasons that I have already given, that you can leave that question open as to existing municipalities.

Mr. Thomas: Suppose we provide a form of organization for villages without fixing the limit as to population, and another organization for cities without fixing any limit as to population. Could, say, the city of Newark, which has a population of twenty or twenty-five thousand or over, organize as a village and another city, like the city of Bowling Green, which has perhaps something like ten thousand population, organize as a city, if it so chose?

Judge King: That in my opinion is objectionable.

Mr. Chapman: I would like to ask you whether you consider it constitutional to provide in a code that upon a resolution being passed by a city council a certain office or set of offices may go into existence? For instance, the principle will be found in a bill that we passed last winter:

"Upon the written application of the county auditor of my county to the state board of appraisers and assessors for the appointment of a board of review for any municipal corporation in such county for the equalization of real and personal property, monies and credits within such municipal corporation, such board of appraisers and assessors may appoint such board of review." etc.

Judge King: I don't want to go back of the returns. I understand that law has been held unconstitutional already.

Mr. Chapman: Not in the supreme court.

Judge King: No, it is still an open question. I will leave it to the court.

Mr. Price: Suppose the municipal corporations in this state were dissolved by legislative act. Then we turn around and put on two methods of incorporation, one for villages and one for cities, and say any community that wants to incorporate may pursue either one of those two methods, and one when it is completed leads to a city and the other when it is completed leads to a village?

Judge King: That is the same question Mr. Thomas asked practically, and leads to the same conclusion. My present opinion is it would not be legal. That might be subject to some doubt.

Mr. Price: Suppose we make all municipalities above five thousand cities. We have an unincorporated community of six thousand people. What is it as the statutes now stand?

Judge King: I don't know. The Supreme Court has said cities and villages existed before there were constitutions. Still, there were not very many of them.

Mr. Price: In other words, we have no provision for the incorporation of a city?

Judge King: If the legislature refused to act I expect the people could get together and organize. It would be a question of necessity.

Mr. Price: Whenever organized the law would declare it a village by the method of its organization?

Judge King: That would be right.

Mr. Thomas: The constitution has not defined what a village is nor what a city is?

Judge King: No.

Mr. Thomas: The constitution not having defined what a village is, and not having defined what a city is, is there any reason why the legislature could not provide a form of organization and say that municipalities organized according to the provisions of this act shall be villages, and provide another organization without any regard to population and say that a municipality organized under the provisions of this act shall be a city?

Judge King: I don't think so. I am prepared to say that distinctly. It would be utter nonsense for the legislature to provide that a municipality could be both or either a village and a city, as it chose. The law which it passes must be general in its operation throughout the state, and I do not see any reason why they must not make the line of

demarcation the same all over the state, and that population is the only method of determining whether the corporation shall be the one or the other. It is the one universal thing that is recognized both by courts and all writers and is the thing which determines the necessity for more extensive organization.

Mr. Thomas: Do I understand you to say that population alone will determine whether a municipality is a city or village under the constitution?

Judge King: No; I do not say any court has held that, but it is the practical thing which determines. I do not mean to be understood as saying that under the constitution it is necessary for the legislature to provide for the organization of both cities and villages. It may provide for the organization of every municipality in the state and call it a village if it pleases or call it a city if it pleases, and leave out the other, but whatever organization it provides for must be a general law, that is, an act of uniform operation. The constitution having designated and named villages and having designated and named cities, the legislature can do likewise and name cities by a general law and name villages by a general law. Universal opinion agrees that the line of demarcation shall be by population.

Mr. Thomas: Does not the constitution recognize the fact there may be both cities and villages in Ohio?

Judge King: Yes; and there may be but one.

Mr. Thomas: And there may be both?

Judge King: Yes, sir.

Mr. Price: If there may be both cities and villages, isn't it left to the legislature to determine that a certain kind of organization shall impress the character of a village upon a municipality and a certain other kind of organization shall impress the character of a city?

Judge King: Yes; you are right upon that point.

Mr. Thomas: Then population does not decide it?

Judge King: But population is the method adopted by the legislature to determine which shall be a city or village. If there is any physical reason equally common to all municipalities, I do not say it may not be adopted as the foundation for the dividing line, but population is common to every municipality and the necessity for increased methods or more complicated organization, if I might say that, is upon the town having the larger population. So universally it is conceded by everybody that some population should be adopted as the line between cities

and villages. Villages and cities existed before any constitution was adopted in Ohio. They have always existed, sometimes by statutory law, sometimes by common consent long before there were any statutes or constitutions. But in Ohio the legislative power of the people has been delegated to the legislature. It has been said the legislature shall provide the organization for cities and villages. I take it they shall decide what municipalities shall be cities and what ones shall be villages, and I think that population is conceded to be the determining factor.

Mr. Thomas: Under the constitution of 1802 cities and villages were organized under special acts. Under that constitution some municipalities of 10,000 might have been organized as villages and some municipalities of 5,000 might have been organized as cities. In such cases the legislature did not base it upon population, did it? It based it upon organization?

Judge King: No; it would not be obliged to where they could pass special acts. They could say a municipality situated on a bay of Lake Erie or any other thing.

Mr. Price: After the constitution was adopted, at what point did it change?

Judge King: When the legislature got at it to perform its duty imposed upon it by the constitution which the people of these cities and villages adopted.

Mr. Price: Then if Mr. Thomas's assumption be true, before the legislature had met there were villages in this state larger than some cities?

Judge King: No doubt there were.

Mr. Price: Then it is the act of the legislature that has made them cities and villages?

Judge King: Yes, sir. The constitution has not made them either one or the other.

Mr. Thomas: It is not necessary that it shall be based on physical conditions?

Judge King: No; but on conditions that exist.

Mr. Price: Judge West takes the view they may organize because there is a voluntary incorporation.

Judge King: No doubt; but I think that was all done away with by the provisions of the constitution.

Speaker McKinnon: The Cincinnati franchise case having been brought up here, I would like to ask you if the act passed last winter

would not be curative in that regard, the Supreme Court having in former decisions upheld the classification of cities?

Judge King: That may be true. If I wanted to be certain about it or felt that I was in doubt, as I would feel, I should be better satisfied with a law passed now having some reference to existing conditions.

Speaker McKinnon: And calling attention to those conditions?

Judge King: Yes, but it may be just as good without that.

Mr. Stage: Your argument proceeds on the ground that Article 13, Section 6, means provide the organization. You don't think then, that word "for" adds or takes away from the meaning of that clause at all?

Judge King: No. That expression could have been changed and have meant the same thing. I think to provide *for* the organization means to provide a plan so that the people can organize. If it said "provide the organization" and left out the word "for" some very critical people might object to that statement as saying it was incumbent upon the legislature to create the organization. That is not what the legislature is for, but it is for laying down the rules upon which the people shall organize.

Mr. Stage: I understood you to say if the legislature should provide for a mayor, representing the chief executive of a municipality, and a common council, and delegated to that organization such powers as would be necessary to carry out its municipal functions, that that would be an organization which would satisfy the terms of the constitution, if it was general and of uniform operation throughout the state?

Judge King: I believe it would.

Mr. Stage: Every city department or official in the executive department of the city would be an assistant to the mayor, or an agent of the mayor, would he not, under that organization?

Judge King: Or of the council, unless you take away from the council all appointive power.

Mr. Stage: Supposing we provide such an organization and give the municipalities powers and provide a mayor who should appoint such agents and officers to carry out the administrative functions in a city as were necessary, would that be constitutional?

Judge King: Undoubtedly, in my opinion.

Mr. Stage: About the curative provisions. The Cleveland decision proceeded upon the moral obligation of the county to repay the bondholders because the county had in its possession property for which the

money derived from those bonds had been expended. That was the fact in Cleveland, was it not?

Judge King: That is the fact.

Mr. Stage: I will ask you then if the opinion of the superior court being sustained by the supreme court leaves the traction company of Cincinnati without any franchise in your opinion?

Judge King: I don't know.

Mr. Stage: Assuming that it does, would it be fulfilling the moral obligation in that case if the legislature granted them a 25-year franchise instead of a 50-year franchise,—that is, if the legislature should grant them authority to make any contract different from the old one?

Judge King: If I were interested in the matter I should think the legislature had done just half its duty.

Mr. Stage: On the ground that they have expended millions of dollars in the improvement of their property because they had a 50-year franchise and not a 25-year franchise?

Judge King: That is the assumption, yes.

Mr. Stage: Isn't it true they would never expend any more than the efficiency of the service and the demands of the road at that time would require?

Judge King: That is hardly, I think, quite true, though I am not going to make an argument in favor of perpetual franchises. I think that the management of such a corporation having a franchise for 50 years would take chances in extending its lines to territory that for a time did not pay. I am saying I think they might do that.

Mr. Stage: You don't know whether that has been done in this case?

Judge King: No. I say they might take chances on that that they would not take on a shorter term, but I would not say they would not take the same chance for 25 years.

Mr. Stage: I will ask you if there is any principle of stare decisis in Ohio?

Judge King: The court has said so several times. I don't know what they will do with it when they get through with it.

Upon motion the committee recessed until 2:00 p. m.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

75TH GENERAL ASSEMBLY, EXTRAORDINARY SESSION.

Columbus, Ohio, September 12th, 1902.

2:00 o'clock P. M.

Pursuant to recess the special committee for the consideration of Municipal Codes met in Legislative Hall, Mr. Comings presiding.

The following members responded to roll-call:

Comings,	Denman,
Painter,	Willis,
Guerin,	Stage.
Price,	Bracken,
Cole,	Ainsworth,
Metzger,	Maag,
Thomas,	Huffman,
Allen,	Brumbaugh,
Silberberg,	Sharp.

Mr. M. E. Meisel, the member from Cuyahoga, addressed the committee as follows:

Mr. Meisel: Mr. Chairman and Members of the Committee: I shall have to apologize for reading what I have to say this afternoon, on the ground that I believe it can be stated more concisely in that manner, more briefly, and will outline more specifically what I have in mind to say.

I count myself fortunate to be able to ask you to turn with me from the harrowing realm of constitutional limitations, judicial interpretations, delegated power and municipal possibilities and kindred hysteria into a field where the profession and the laity alike may tread, not fearful lest sacred legal images set upon pedestals of convenience, may be demolished.

In the discussion before this body two conflicting theories of organization, two diverse interpretations of section 6, Art. 13 have been presented, the one arising out of a strict construction — the other resulting from a broad interpretation. The one, if followed, would provide a flexible, mobile

scheme of organization, permitting varied, diverse, forms of municipal government. The other will provide an inflexible, immutable organization complete in every detail — yet denying local self-government, home rule and municipal freedom. As to the constitutionality of one or the other, or both, we are not at this time concerned. The positiveness of the assertion that a code which permitted municipal charters, or constitutional municipal conventions, would be a violation of article 13, section 6, has induced and argued the submission of the amendment which bears my name, — so that, by its adoption, the powers and rights of municipalities to secure municipal freedom and governmental independence may be written so plainly that “he who runs may read.”

House Joint Resolution No. 5 has been placed upon your desks this morning and you have probably had scant time for its perusal. Permit me, therefore, to make a virtue of necessity and read it to you so that its provisions may be impressed upon your minds.

Be it resolved by the General Assembly of the State of Ohio:

Section I. “That a proposition shall be submitted to the electors of this state on the first Tuesday after the first Monday in November, 1903, to amend section 6 of article XIII., of the constitution of the state of Ohio, so that it shall read as follows :

Article XIII.

Sec. 6. The General Assembly shall provide for the organization of cities and incorporated villages by general laws and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit so as to prevent the abuse of such power; but any city containing a population of more than 3,500 inhabitants may frame a charter for its own government consistent with the constitution and laws of this state, and such charter, when adopted as hereinafter provided, shall supersede any general enchartering statute enacted by the General Assembly as to such city, and all such charters shall be elected in the following manner :

“The council or other legislative body of such city may prepare and propose a charter for any such city, or a new charter, or an amendment to any such charter, and any such proposed charter or amendment shall be presented by such council or other legislative body to the mayor or other chief executive officer thereof, who shall upon the receipt thereof, cause a proclamation to be issued for an election thereon, to be held under the

general election laws of the state, and shall cause such proposed charter or amendment to be published.

"And upon the proclamation of the chief executive officer of such city as hereinbefore provided, and upon the due publication of such proposed charter or amendment, it shall be submitted to the qualified electors of said city at a general election, if there be one within 90 days of the date of the passage of said charter or amendment by the legislative body, and if there be no such general election within such time, then at a special election to be held for the purpose, within said 90 days; and if a majority of such qualified electors, voting at such election shall ratify the said proposed charter or amendment, the same shall become the fundamental law and charter of such city, provided that at any time the mayor of such city shall proclaim and cause to be submitted to the qualified electors of any city any charter or amendment without the initiative action of the legislative body of such city, if the same be presented to him accompanied by a petition for such submission signed by a number of qualified electors thereof, not less than 15 per cent of the total votes cast at the preceding municipal election, and that in the event of such submission it shall be done in like manner and form and with like effect as herein provided for the submission of a charter or amendment proposed by the legislative body of such city. And provided, also, that if at any time there be submitted to the mayor of any such city more than one proposed charter or amendment for submission to the electorate, any number of such charters or amendments may be submitted at the same election as alternatives, a majority of the total vote cast being necessary for the adoption of any such charter or amendment.

"And all charters or amendments proposed in accordance with the foregoing shall provide for a mayor or other chief executive to be elective, and a legislative body of either one or two houses, the members of at least one of said legislative bodies to be elective.

"The General Assembly shall provide by general laws applicable to all cities alike a limit to their power of borrowing money, contracting debts and loaning their credit, but all such cities shall have exclusive power to provide in any charter adopted pursuant hereto the mode and manner of raising public revenue and expending the same, the character and classes of property upon which taxes shall be levied for municipal purposes within such corporation, the details of the department or other organization for the purpose of transacting and carrying on the affairs of such city, the number, designation, duties, tenure, mode of selection and removal and compensation of all public officers and employees, ex-

cept as hereinbefore provided, except that all elective officers shall be elected for definite terms and all appointive officers shall be removable in such maner as such charter or ordinances passed by authority thereof shall provide, and provided further, that all provisions of any such charter or ordinance shall always be subject to amendment, alteration or repeal. And all such cities shall have power to provide the mode and manner and terms upon which rights in the public streets and extensions and renewals of such rights shall be granted to corporations or individuals; provided, that no such right or franchise or extension or renewal thereof may be granted by any city for a longer term than 25 years. And such city shall further have the power to provide in any charter or by ordinances passed under the authority of such charter for the levying and collection of taxes to provide for the maintenance of the public order and for the safety of persons and property and to determine in any such charter or amendment what utilities shall be owned and operated by such city, and to provide for the manner of raising funds for the construction, acquisition and operation thereof either from loans made upon such utilities as security or otherwise. And every such city shall have the power to provide in such charter for the performance of all the things necessary and proper to the government of such city, subject to such general laws as may be passed by the General Assembly upon subjects not local in character or interest and except as hereinbefore provided.

Sec. 2. At such election those electors desiring to vote for such amendment shall have placed on their ballots the words — Constitutional Amendment — Providing for the classification of cities — Yes. And those opposed to such amendment shall have placed on their ballots the words — Constitutional Amendment — Providing for the classification of cities — No.”

Briefly, then, the proposed amendment provides as follows:

1. The adoption by the council or other legislative body of any municipality, containing at least 3500 inhabitants, of a charter government for such city.
2. The submission of said charter to the qualified electors for their adoption or rejection.
3. The submission of a charter proposed by at least fifteen per cent. of the electorate without the initiative of the legislative body.

4. Mandatory provisions for a mayor or other chief executive and a legislative body of either one or two houses, one of which shall be elective.

5. General scope of powers permitted in the charter to the municipality.

6. Acquisition of public service utilities.

7. Renewals of franchises.

I claim no pride of ownership. The proposition here enunciated is no vain, illusionary theory. It is no "will-o-the-wisp" nor "Jack-o'-Lantern" glimmering feebly in a labyrinth of obscurity. It has passed the experimental stage elsewhere and become splendid reality.

In 1879 the state of California marked a notch in municipal progress. A constitutional provision was adopted permitting the election of fifteen freeholders, such freeholders to frame and prepare a charter which is submitted to the electorate. If ratified, it is then submitted to the legislature for ratification or rejection without the power of amendment. If adopted by the legislature it then becomes the organic law of the city.

Such charter may be amended after adoption by propositions submitted by legislative authority to the electors and ratified by three-fifths of the electorate.

In 1875 Missouri provided home rule. It set the line of demarcation at 100,000 population with provisions for municipal charters.

Washington, by Art. XI, Sec. X, of its constitution, provides that cities containing 20,000 or more shall be permitted to frame their charters. Such charters submitted to the qualified electors and ratified, become the organic laws.

In 1896 Minnesota developed the theory broadly. The legislature of that state shall provide for a board of fifteen freeholders appointed by the district judges. Said board shall draft the charter and if ratified by four-sevenths of the voters it becomes the charter of the city or village. Every such charter must provide for a mayor or other chief magistrate and for a legislative body of one or two houses; if two houses, one must be elected by the general vote of the people.

The state of Oregon has passed a constitutional amendment in its legislature providing home rule along the lines laid down in Missouri.

Louisiana, by statute, in 1896, has provided that any city, except New Orleans, may adopt a municipal charter.

The legislature of Colorado has prepared a constitutional amendment for the framing of charters by popularly chosen charter conventions.

The uniformity of the successful operation of the municipalities in these states attest the merit and worth of such a system beyond refutation. Ohio should now take her stand in line for municipal progress. The most marked tendency in legislation for municipalities has been the steady growth of home rule provisions and the increased power and responsibility put in the city electorate. And that status has developed despite the fact that of all political units, the municipality alone has no initiative. The nation has an independent initiative, the state has an independent initiative, the individual has, but the municipality must have permission. Resultant therefrom, our cities have been in bondage. It is claimed that they were created by the legislature, had the breath of life breathed into them by the state, and hence, if it is desired to withdraw the life spirit, such right exists. But that is untrue. Cities have existed without legislatures. Their rights are inherent. Their power of self-government is co-extensive with their existence.

The legislature must use cities and towns to accomplish the purposes of state, and in that relation may properly mold their government and their functions, but no more right to deprive them of freedom and self-control in local matters exists than that Congress should deprive a state of its freedom and self-control in international concerns. In 28 Mich., 228, *Board of Park Commissioners vs. Detroit*, Judge Cooley laid down this proposition:

"It is as easy to justify on principle a law which permits the rest of the community to dictate to an individual what he shall eat and what he shall drink, as to justify any constitutional basis for one law under which the people of other parts of the state dictate to one city what fountains shall be erected for the use of the citizens."

The right of self-government is an axiom of our political system. Wherever this right can be exercised directly by the people, such exercise should be conserved. If this right does not exist under our present constitution, if the provisions of the latter are not broad enough to permit of such exercise as far as municipal control is concerned, then our constitution must be changed.

In 55 N. Y. 50, *People v. Albertson*, the Supreme Court says:

"The right of self-government lies at the foundation of our institutions and cannot be destroyed or interfered with, even in respect to the smallest of the divisions into which the state is divided, without weakening the entire foundation."

The results of the present system of municipal governments, the result of any system adopted by this General Assembly which is predicated upon any other premise save that of elasticity, flexibility, and local adaptability, is manifold in disadvantage. It cripples local patriotism, it creates a disastrous apathy; it forfeits that educational development, which comes of an earnest attention to public questions.

Municipal dependence helps the politician. It shifts the scene of action to a field where corruption wins more easily.

The paths of progress and reform, the propagation of new theories and new policies are obstructed by the inertia consequent on the necessity of fighting every upward measure through the legislature, against the force of antagonistic private interests, not to mention the indifference of more or less alien legislators.

The cure for the evils of municipal dependence, is municipal independence. The remedy for municipal subjection, is municipal sovereignty. Exclude the legislature from the municipal business. Leave the cities free to act in their own concerns in ways not in conflict with superior law, but subject to broad limitations such as those applied to states in the Federal Constitution; replace municipal servitude by municipal liberty; instead of the principle that cities can do nothing unless permitted, establish the principle that cities can do anything unless forbidden, giving the municipalities a strong initiative power of self-movement. Said Dr. Shaw: "We shall never reach a permanent basis in this country until we have attained simplicity and unity so that the people of a large town may feel that they have their own municipal weal or woe definitely in their own hands. Then a strong public opinion will arise to protect such municipal home rule and municipal government will go on steadily."

With this end in view we offer this amendment to the Constitution. Its adoption will serve in a measure to draw the line between state and municipal interests. It will provide municipal sovereignty within the sphere of municipal business. This area of municipal sovereignty will cover franchises and public enterprises of local character. To the state will be left the unifying, systematizing, co-ordinating power upon which we depend for uniformity. To make the home rule charters accord with the will of the people, this amendment carries provisions guaranteeing the initiative and referendum in the making and amending of charters.

As a business corporation dealing with property for municipal revenue services or advantage, the city should have the fullest discretion, subject

only to the broad limitation in respect to debt, etc., and to prevent hasty and illconsidered action. Further, the initiative for the charter should not rest entirely with the city's officials, but should contain provisions securing the initiative on amendments and ordinances. Adopt this amendment and municipal independence would be a government of the many, not of the few; a government, the result of the whole body of American citizenship, not a lifeless, inanimate machine dependent on legislative steam for motive power. The results? A splendid charter—civil service—public ownership, if desired, initiative and referendum home rule—self government, municipal progress.

You may say that the legislature will modify, limit or annul the powers, but I say to you that charter liberties gather about them a public sentiment that will protect and lead and secure a specific, definite constitutional division.

I want this General Assembly to go back to the pristine simplicity of the town-meeting where were first fought out and established those vigorous principles which live to-day.

If we strive to gain a better government, we shall come to deserve one. Liberty was not born of idleness, nor is freedom the birthright of slumberers.

“Those serve truth best who to themselves are true,
And what they dare to dream of, dare to do.”

The Chairman: Does any member of the Committee desire to ask Mr. Meisel any questions? If there are no questions, Mr. Thurman will address the Committee on the subject of Primary Elections.

Mr. Allen W. Thurman: Mr. Chairman and Gentlemen of the Committee: The last remark of the Chairman, inquiring if there were any questions to be asked, makes me request that after hearing these remarks of mine, you will not ask me too many. After hearing these discussions, I am reminded of the story that I told Mr. Price. Hearing these learned debates on the constitutionality or the unconstitutionality of measures, whether the Supreme Court would decide this way, or that way, reminds me of the story of the old darkey preacher, who said that he took his sermon from a certain chapter in St. Paul, and who began his remarks by saying, “When Adam, the first man, was made out of the cold, cod clay and was put up against the mantel-piece to dry—” Just then some other colored gentleman of the congregation arose and said,

"May I ask a question?" The preacher said yes. "Well," he said, "I would like to have you inform us who made that mantel-piece?" "You fool nigger, you," said the preacher, "sit down; don't you know all such questions as that would ruin any system of theology?" (Laughter.)

Now, I know that such questions have been asked by Mr. Price and Mr. Thomas and others; as will ruin any system or theory of construction that has ever been placed before a court. There does not seem to be any end to the subject, and if you ask me such questions, I think I should feel like that old gentleman down in Highland county that we are told about. He was an old, cross fellow who used to come and sit around in the drugstores; he carried a cane—always carried a cane. He was looked upon as a kind of an oracle, but a very gruff old fellow. He sat there every day, and people would come in and say, "Well, Mr. Jones, do you think it will rain today? Do you think it is going to storm?" "You damned fool," he would reply, "guess yourself." (Laughter.)

The Chairman: Does anybody wish to ask Mr. Thurman any questions at this point?

Mr. Thurman: There is one thing upon which I think we will all agree; it is a thing about which I cannot see how there can be any divergence of opinion, and that is, that we ought to have honest elections. No matter what code you may adopt, gentlemen, whether you adopt what is known as the Nash Code, whether you adopt the board plan, whether you adopt the plan which is known as the Federal plan, pure and simple, or whether you adopt the plan of the Board of Commerce,—any plan that you may adopt, I care not what it may be,—after all, will depend upon the men who administer it. You can have any kind of a form that you wish, you may have the best plan in the world, and if you have incompetent or dishonest men to administer it, it will be a failure. I want to say right here, in that connection, that you would better have dishonest men, than to have incompetent ones administer anything. Therefore, that being the case, you must begin at the beginning, and the beginning of it all is, to provide some way whereby all of the citizens can have an equal say, and an equal power in saying, who shall administer their affairs. That can only be brought about by a proper primary system.

This is not new, at all, with me; it began a long time ago. I read here the other day something that I had written ten years ago. I have

got something here today that I wrote twelve years ago; I don't think I would want to change any of this, any more than I would have wanted to change any of the other. This relates to ballot reform, because I believe that you cannot have permanent municipal reform until you first provide for some permanent ballot reform; in other words, begin at the beginning. This is not all exactly applicable; there may be some things in it that do not apply exactly to today, but the general line of it, I think, is precisely correct, and with your permission I will read it. This was written before there was an Australian ballot law, you will remember.

By the ballot, is meant the manner by which the people are supposed to express their sovereign will; or, in other words, the ballot is a medium by which they delegate their sovereign power to others; for it must always be remembered that while, theoretically, under our form of government, the people govern, yet, in reality, they do not, for this sovereignty or power possessed by them can only be exercised by them at certain times, that is, when it has reverted to them from those to whom it had been delegated by them. The people, then, do not, in reality, govern, but are separate and distinct from the government. Therefore, it follows that, as the people are, in truth, only sovereigns upon days of elections, that any surrounding conditions, or manner of conducting elections that interferes, either directly or indirectly, with their being able to freely and absolutely exercise this sovereignty, can not help but deprive the people of the power which belongs to themselves at this, the only time when they can exercise it, and indirectly transfer it to some other power. This, then, brings us to the question, Why do the people exercise this power, or right of suffrage? To which the answer evidently is, For the purpose of saying who shall administer their affairs; that is, who shall hold their offices. Now, at present, do the people say who shall administer their affairs? Theoretically they do; in truth they do not; and until this be true in fact as well as theory — until you can provide a way by which the people can absolutely say who shall administer their affairs, and not be compelled, as they are now, to simply ratify the actions of men who are principally interested in fleecing them, neither ballot nor municipal reform, as they are popularly understood, will amount to anything other than that they are steps in the right direction.

Now, what is the popular belief regarding ballot reform? It is, that there shall be laws passed providing election machinery, such as will insure

the free and honest casting of the ballots at the *general elections*; that is, the election where the men who are to hold offices are chosen. A general belief seems to be, that if this can be accomplished, that then we will have a panacea for all our evils; and there have been many plans, during the last few years, suggested and then put into operation, under the belief that such would be the case.

These election laws, while a good thing, and should be adopted — for we must have honest general elections as well as others — yet they are far from being the only thing needed to fully remedy matters. And why? Because, while they are a step in the right direction, they do not get at the root of the evil, and no law which simply governs *general elections* ever will, because the mischief is done before and at the primary elections, which are conducted by those who control the machine. All intelligent men know that this is true. Every one knows that not one citizen in five thousand has anything to do with determining who the candidates shall be for whom we vote at the general elections. It may be said that we attend the primary elections and vote for whom shall be candidates at the general elections, but what voice have nine out of ten of us in determining who shall be the candidates at these primary elections? Do we not know, as a rule, that they are selected by a very few, and that few composed of men who control political parties? Although in several of the states we have, comparatively, honest primary elections as far as the mere casting of the ballots is concerned, yet the people at large have learned that, in truth, they have nothing whatsoever to do with the selection of the candidates; that they are merely voting for men on one side or the other who have been picked out for them, not the ones they themselves would have chosen had they been consulted. Therefore, they no longer take any interest in these elections. They not only feel, but they know that it is useless to do so. They are men engaged in all kinds of active business pursuits, and have not the time to perfect any organization so they can act in concert, and they know and realize that individual action can never accomplish anything over organized forces. Consequently, they not only remain away from the primaries, but in their disgust lose interest in public affairs, and what is worse, begin to lose faith in the power of the people to govern themselves. Time and time again have the people resisted this kind of procedure and endeavored in one way and another to overcome it, but it has always resulted in the same way, because green troops can never overcome veterans. The trained politician and the forces under him have always, in the long run, been more than a match for them.

and defeat after defeat has so discouraged the majority of the citizens that they have now reached that place where they consider it well nigh useless to battle longer.

Now, when these things are true, as we well know they are, when the casting of ballots at the primaries is only a way of endorsing "the machine," what difference does it make as to what kind of machinery you have for casting them for the people, who are sovereigns, cannot in the first place say for whom they shall be cast?

If the people are sovereigns, but can only exercise their sovereignty in the manner prescribed by professional politicians, what does this power amount to? And is it not clear, too, that the only way in which the people can absolutely exercise it is by being able to state who shall administer their affairs; and is it not equally clear that the only way in which this can be done is to have a way provided by which the people can as nearly as possible absolutely dictate who shall be the candidates for the different offices?

Instead, then, of merely seeking to ascertain the best way of conducting *general elections* instead of this providing the most expensive and intricate lock to put upon our stable door after the horse has been stolen, why not begin at the beginning and provide for governing the primary elections? What reasons can be given for throwing safeguards around the general elections that do not apply with ten times more force to the primary elections? I defy anybody to point out one. How can it be expected to have pure water in a stream if the fountainhead is polluted?

Here, then, is the place to begin. Throw every practical safeguard that can be conceived of around these primary elections. Make them so the people themselves can, if they wish to, say who shall be the candidates for the different offices. Make them so that it will be an impossibility for any ring of politicians to far in advance select candidates, and then, by manipulation of one kind or another, make it impossible for the people to vote for any other with the hope of success.

Now, to bring this about the first thing that is necessary to be done — it can not be done without it — is not only to improve the manner of casting our ballots, but also to provide how the candidates, to be voted for at the primary elections, shall be named. Both of these features could be incorporated into one law, and the Australian system should be the type followed. In addition to the machinery to be used upon the day of election, every one should be required to register before being allowed to vote at a primary. Primary elections of all political parties should be held on the

same day and at the same polling places. The polls should be kept open all day, and that day should be made a legal holiday. A precinct should not contain over two hundred voters.

If, at any primary election, upon the canvass of the returns, it should be ascertained that any person had received a majority of all the votes cast at said election in any ward, precinct or city, respectively, for the office for which he was a candidate therein, respectively, should, in such case, be declared to be elected to said office without any other election. In addition to the penalties generally prescribed for the violation of election laws, there should be an additional penalty disqualifying any person proven to be guilty of the same from exercising the right of franchise at any primary or general election, for at least two years. And to cap the climax, there should be incorporated a provision prohibiting any citizen from voting at a general election who has not voted at the preceding primary election. Such a law governing primary elections would show to the citizens that there has been provided for them a way by which they could in truth exercise their sovereignty, and also that if they did not perform the duties they owe, not only to themselves, but to the community, that they would have to suffer individually for such neglect. A compulsory provision, such as this, may be thought by some to be depriving the citizens of some rights they have, but if the state has the right to regulate and prescribe the manner in which general elections shall be held, and prescribe the penalties for a violation, what reason can be given why this should not be exercised in regard to primary elections, which are the only place and the only time at which the citizens can exercise the power that belongs to themselves. The state has a right to prescribe regulations for conducting all elections, and also to inflict penalties for the violation of the same, not inconsistent with constitutional rights.

As to how an elector might be a candidate, there should be incorporated this kind of a section: Any elector may be a candidate for nomination at any primary election by announcing himself as such to a board of elections, or by being announced to said board by ten or more electors, designating to what party he belongs, at least thirty days before such primary election, and thereupon said board of elections shall cause the names of all such candidates to be immediately published for three consecutive days, and also upon the day preceding and the day of said primary and general elections. And, after said period of publication for three days, other candidates may declare themselves, or be declared to the board of elections, in the manner hereinabove provided, to within fifteen days of

said primary election, which names must also be immediately published as above prescribed.

This provision is so drawn that the only objection in which there is any merit to this mode of naming candidates is obviated, because it does not prevent any citizen from becoming a candidate, if he chooses to. After this provision, there should be designated what kind of a ticket should be used, and how the vote should be cast, recorded and counted, and the result declared; provided, however, that nothing in the act should be construed as prohibiting any elector from erasing any printed names of any persons and marking the names so written for whom he wishes to cast his vote, and said names so inserted by writing, should be counted and certified by the judges, as any other ticket is counted and certified. This last may seem to be a little inconsistent with the provision requiring names to be submitted to the board of elections, but you cannot prevent an elector from casting his ballot for whomsoever he chooses; and, any how, in practice the general mode would be followed. Another good feature of this would be that in case all the names submitted to the board of elections should prove to be bad, that then the citizens could at the last moment vote for an independent candidate. Limited space precludes elaboration at length of these suggestions.

Now, why should not such laws be passed? Would they not place all political parties on an equal footing? Would they not put the poor man and the man of moderate means, who has the intelligence and who is fitted in every way to become a candidate, upon even terms with the rich man? Would they not prevent men who have money and are willing to use it corruptly, from doing so? Because, they would see that the opportunities for placing it where it would do the most good would be so limited that it would not pay. Would not this prevent nominations from being purchased? Would it not, by doing these things give us better officers, and thereby give us a better administration of affairs? I say that it would do all of these things and many more that are equally meritorious; and why any one who sincerely has the general good at heart should be opposed to a measure that even has the slightest tendency in this direction, I can not understand. But, it may be asked, will not the politicians find some way that would make such a law inoperative? You cannot make any law that is perfect. If you could, what would become of the lawyers? What would be the use of our courts? No, and probably the first thing that some of our politicians would do, would

be to try and devise some way to get around it, but it can not be anticipated they would succeed, because the majority of men in all pursuits are at heart honest, and believe in honest methods, and the wise men who manage the affairs of political parties know that it would be impossible for any party organization to expect success by trying to evade a law when the whole public would know exactly why they were seeking to do so. What honest man would want to be the candidate of any party under such circumstances?

You can not, though, my friends, prevent all corruption in political elections by this plan of ballot reform, any more than you can secure permanent municipal reform before the adoption of ballot reform. To do this, you must destroy the motive that prompts men to do dishonest acts in connection with such elections. Whether this can ever be accomplished by a still more radical plan of ballot reform than the one we have been considering, is a debatable question. From what consideration, though, I have been able to give, I am rather inclined to believe that it can be; but I can only suggest the thought to you, for if I attempted to elucidate it there would be no end to this paper, which has already, I have no doubt, become wearisome. From what I have said, some may think that I have little faith in these reforms ever being brought about, and so I would have did I not know that the history of this country has proven that there is one power before which politicians of all grades bend the knee; a power they cannot control, but which, on the contrary, when it becomes fully aroused, always controls them; and this is the power of public opinion. Therefore, do not lose faith just because I have shown you the obstacles in the path, but rather let this stimulate you to continue your efforts, for it is said that "coming events cast their shadows before." They are doing so now. We will have both ballot and municipal reform.

That, written twelve years ago, applies exactly to-day as it did then. Primary elections, as a rule, as conducted in the various cities of this State, are an absolute farce. They have become such a farce that the good citizens, so-called, will have nothing to do with them, and the good citizens have gone so much further as to say that anybody, any man, who has anything to do with politics, or anything of that kind, has some ulterior motive.

If you want to be a member of the legislature, they say, you do not desire to be a candidate on any ground or with any wish to promote the general good, but the reason you are a candidate is because of some dis-

honest motive. When you say to these people, "Why don't you attend primary elections?" They say, "What is the use? You fellows, you politicians, you scoundrels, you are the ones who have all to do with the primary elections, by all the gods of war, who do all these things for us, and we are absolutely helpless."

Now, I say, pass a law that puts them upon an equal footing with everybody else; give these people, as well as other people, an opportunity to say who the candidate shall be, and then if they don't attend to their own affairs, if then they do not attend these primaries, and look after the interests of the community in which they live, why, it is their own fault, and they will be forever compelled to hold their peace, they cannot set themselves up as "holier than thou" and say that everybody connected with politics is an infernal scoundrel. Make these gentlemen fish or cut bait. You can do that by the passage of a proper primary law.

Under the law, as it exists to-day—Well, there is no law, really, because primaries are controlled almost entirely by the political committees; but what you want is a law that has all of the safeguards of the general election thrown around the primary election,—every single, solitary safeguard that is around the general election should be thrown around the primary election, as well.

Judge Thomas: Does this plan of yours permit both tickets to be named the same day?

Mr. Thurman: Yes, that is exactly what it does. If you do that, then no one can come in and say that he has had not had an equal opportunity. Probably we in Columbus have as good a primary system as anywhere in the State, but only the other day I read in the *Journal* where, at the last primary, over in the 13th ward, I think it was, in one precinct, there were cast more votes, by both Democrats and Republicans at the primaries, than were cast by both parties at the general election.

Judge Thomas: Do they vote in the same places, Democrats and Republicans?

Mr. Thurman: All vote at the same place, with every safeguard that is provided for the general election.

Judge Thomas: It amounts practically to two elections?

Mr. Thurman: Yes, except that one is for saying who shall be the candidate, and the other for saying who shall hold the office. There never was a better opportunity than at present to carry this into effect.

One thing I want to mention in regard to this, which was mentioned the other day. A Republican who wanted to be a candidate for mayor of his city in talking to me said, "Under this system, how is it possible for any man to become a candidate and at the same time maintain his self-respect, and his freedom of action?" He said, "The moment that it became known I wanted to be a candidate, I had different men coming to me from my party and saying, "Well, whom are you going to make director of public safety? Whom are you going to make director of public improvements? Whom are you going to make director of law?" Well, if he did not tell them, and did not make promises that he would do this and do that and do the other, he said that he might as well give up the idea of being nominated at all. In the bill presented by Mr. Bracken, in section 6, it provides that any man may become a candidate for a public office by having a petition signed by ten men of the party with which he is openly affiliated, presented to the board of elections, and that then his name is to be placed upon the official ballot. When that is done, it is an utter impossibility for any set of men far in advance, to present two or three candidates, and those to be the only two or three candidates from among whom the citizens can choose.

Judge Thomas: Suppose you had to have spring election and city election both in the same year; does the bill provide that the nominations for city and county officers shall all be made at the same time?

Mr. Thurman: Yes. Then it does another thing; a primary bill of that kind will do another thing, and I think that that will be one great reform, and that is, it will prevent the levying of assessments by political committees, upon men who wish to be candidates for office. There are many men, who are perfectly capable in every way to occupy public position, who, under the present system, cannot ever hope even to be a candidate, simply because they cannot pay the assessments which are levied by the different committees.

Judge Thomas: It would not prevent a rich man using money to get his nomination?

Mr. Thurman: No, sir; I don't know how you are going to do that; you had a law, and even that did not prevent it — the Garfield law. But if you want to be a candidate, under this rule, you don't have to go around and ask of a political committee the privilege of putting your name upon the slate. I know of two or three instances where twice the amount of money has been collected that it costs to conduct the primary

election, and it has simply gone into the pockets of the committee. That is the case, not only in the city of Columbus, with both parties, but all over the state; in other words, they would levy assessments upon men who are absolutely capable of exercising all the powers of office, but who are financially unable to pay, and they make it an impossibility for those men to be candidates, because they have not the money to pay to those fellows simply to have their names upon the ticket.

One other word in regard to this. There never was a better opportunity to pass a primary law than now. You are going to adopt a code, which, as I understand the purpose, will wipe out all of the city governments throughout the state; you are going to begin entirely new. Very probably any code that you may pass will provide for the election of all city officers at the next spring election. Then why not pass a law that will give all of the different citizens an equal chance, an absolutely equal footing as to saying who shall be the candidates at the time of that election?

This bill presented by Mr. Bracken is an absolutely non-partisan measure; it has no more political bias in it than four chapters out of the Koran; it is absolutely free — it simply puts everybody, Democrats, Republicans, Prohibitionists, Populists and Socialists, black and white, on an absolutely equal footing, and that is exactly what you have always attempted in the general elections and that is the very reason you ought to have it in the primary elections.

I want to say to you again, and to emphasize the point, that the beginning of all this reform is, who shall hold the offices? Provide it so that the people can decide and have good men, and I don't care much what kind of a form of government you have, you will have a good administration of affairs. If you do not do that, I don't care what kind of a form of government you have, you will have a bad administration.

On motion, the committee adjourned to 10:30 o'clock Monday morning, September 15th, 1902.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

COLUMBUS, OHIO, MONDAY, SEPT. 15, 1902—10:30 A. M.

The Special Committee for the consideration of Municipal Codes met in the Finance Committee room, Mr. Comings presiding.

On roll call the following members were present:

Comings,	Willis,
Painter,	Gear,
Guerin,	Stage,
Cole,	Bracken,
Thomas,	Ainsworth,
Worthington,	Huffman,
Denman,	Brumbaugh,
Hypes,	Sharp.

The Chairman: Beginning with this morning's work, this committee is ready to take the second step in the consideration of the questions before us. We have given two or three weeks to organized, careful consideration of municipal government in general, its features and requisites. It seems to me now, that having heard, as we have, from the best informed men on this subject, not only of our own state, but of other states, as well, we are now ready to get down to the work of construction, and to this end I would urge that every member of the committee give the subject careful, candid consideration. I hardly need to say this, for it has already been done; but we are now to take the second step, in which the work will be largely formative. We have all learned about municipal needs, and I think we are all well enough versed in these features to take wise and well-considered action. The chair would urge that in the consideration of the questions before us, each member adhere as closely as possible to the rules of parliamentary usage.

Mr. Cole: There are four different codes before this committee; one introduced by Mr. Comings, known as the "Nash code," one introduced by Mr. Guerin, one by Mr. Chapman and one by Mr. York.

In crystallizing our thought into law, it will be necessary to select one of those bills as a basis for the law. We cannot report four bills back to the house, with amendments, and my judgment is, that it will be necessary to take one of these bills up and make all our amendments to that one bill.

I therefore move you, Mr. Chairman, that we take up, as a basis for the bill that we shall report back to the house for adoption, the Nash code, as introduced by Mr. Comings, known as House Bill No. 5.

Mr. Worthington: Mr. Chairman, I second that motion.

The Chairman: It is moved and seconded that the Nash code, House Bill No. 5, be made the basis for the bill to be reported back to the House for adoption. Are there any remarks?

Mr. Stage: Mr. Chairman, I want to speak to that motion. I think that is necessary, and that we shall get to it, at the proper time, but it seems to me that fundamentally and legally, in the order of our consideration here, having had a great deal of discussion, and in view of the fight we have had on constitutional questions, it would be proper and logical to me, that we should found our conditions here upon the first logical step in the process, and that that would be for this committee to decide, first, before we take up any specific code, whether there is a constitutional necessity for this committee, or the members thereof, to impose upon the municipalities of Ohio a plan of organization rigid in its form, or whether there is a constitutional possibility that that plan of organization may be left to the municipalities themselves. It seems to me that that is the foundation point from which the consideration of this committee should start.

Having decided that, for or against, then take up some code as a basis for our work, and then proceed to decide another fundamental question, upon what plan that code shall be amended.

It seems to me that in this way, getting the sense of the committee, we shall have certain large questions decided which will regulate the form and extent of the amendments which will be offered before this committee. I should very much desire, at this time before voting upon this question of which code, that the question I have raised should be acted upon.

Mr. Worthington: I am in favor of the motion as made by the gentleman from Hancock (Mr. Cole). I realize that in order to apply anything, we must have the foundation and the commencement. We have heard these different bills discussed now, for the last two weeks,

very intelligently, and I believe that all will agree that the four bills are very much alike in a great many respects. I think it is necessary for us to take something as a basis, and I believe the Nash code is the best one for that purpose, or at least as good as any of the others, to build upon. These questions of constitutionality can be taken up as we come to them. The question of a flexible code can be taken up when we come to the cities, or whatever subject is under discussion, and the bill amended by the committee. I think the motion is a proper and good one, and I hope it will prevail.

Mr. Willis: It occurs to me that the question which Mr. Stage has suggested can be settled, indirectly by voting on this motion. It seems to me that the committee can express its opinion in that regard by voting this question up or down. If the committee shall decide to make House Bill No. 5 the basis of its deliberations, by implication it has decided the question raised by the gentleman from Cuyahoga.

Personally, I think this motion ought to prevail; it seems to me that House Bill No. 5 furnishes the best workable basis upon which we can proceed. It seems to me the motion is a wise and appropriate one.

Mr. Guerin: Mr. Chairman, I think that Mr. Stage's suggestion is a very good one. Personally, I am in favor of taking up the Nash bill as a basis; but I realize the fact that other members of this committee have a perfect right to say that some other bill shall be the basis, and I think we can, by a different motion, bring up this question directly, and before we go into the general and special powers of municipalities, have settled first and last, the question of whether or not we will provide for organization along the general line indicated by that bill. In order to bring that matter before the committee, I shall move to amend the motion made by the gentleman from Hancock (Mr. Cole) that the committee now proceed to the organization of cities, as contained in House Bill No. 5, on page 31. That brings up the question, first, whether the state shall provide simply a council and a mayor and permit the cities to have municipal government, as provided in these other bills, whether we shall have boards, or single heads of departments, whether the officers shall be elective or appointive—in fact, it brings up every question concerning which, in my opinion, there is any dispute or differences among the members of this committee.

Now, if we can first settle on that, using the governor's code as a basis, then we can intelligently proceed to fix our line of demarkation, and to grant the special and general powers in accordance with the plan

of organization. . But the plan of organization should be first settled. I do not think it a wise thing to start in—although the senate has seen fit to do so—with the first section of any bill; rather, first go to the fundamental principles and work from that.

Now, if under the York bill, we have simply a mayor and a council, we would not have to go through all this stuff in here; we could simply make whatever limitations are required and allow it to go at that. On the other hand, if we are to have boards, and have them elected by the people, as provided in the Nash bill, or code, the general powers and the special powers contained in that chapter will be generally different in some material respects, at least, from what it would be if we had single heads of departments, and have them elected or appointed, as the case may be. I think it is only fair to the members here that we should vote upon this question and allow them, at this time, to express their views,—to take this matter up in this manner.

I want to say, candidly and honestly, that I think the Nash code should be the basis or the foundation upon which we build, but I believe, first, we should decide how we are going to organize cities; for after that is decided, it is a very easy matter to construct the superstructure.

Mr. Worthington: How would it do to take the governor's code as a basis, and then proceed immediately afterwards to the organization of cities?

Mr. Guerin: I am saying we can take the third chapter of the governor's code now as a basis to work upon for the organization of cities. If we organize the cities in line with what is in the governor's bill, or have single heads of departments, then by another motion proceed to make the general and special powers of cities, and these other matters, the basis of our future work—it seems to me that is fair to every one and a very expeditious way to proceed, and I have therefore moved that Mr. Cole's motion be amended as I have suggested.

Judge Thomas: I agree with the motion made by the gentleman from Hancock, that some bill will have to be made the basis of whatever work we do here. I do not believe that the amendment of the gentleman from Erie (Mr. Guerin) ought to prevail until after this question as to which one of the bills we should take as a basis, shall have been decided. When that question is determined, then the gentleman from Erie may make his motion, and it would then be in order, in my opinion. As I understand him, he is agreed, generally that the motion of the gentleman from Hancock should prevail, but he seeks,

by his amendment to inject into that a detail of work that the committee will necessarily have to enter into, if we adopt the basis. It seems to me that is cumbering up this motion with something that is not necessary. His motion that we should proceed to the organization, after, we determine upon a basis, might be a good thing to do; I do not say that I would agree with it, because the question of organization, ought, perhaps to come up later.

Mr. Guerin: Will the gentleman yield to a question? I think you are laboring under a false impression. My idea is, that while I personally favor the Nash code as a basis, we should determine upon the question as to the organization of cities. If a majority of the committee should adopt some other organization generally different from that provided in House Bill No. 5, or House Bill No. 14, then we will adopt one of the other codes as a basis. It seems to me, Judge Thomas, that that is the only way to determine those questions. I do not want to cast my vote against taking the governor's code as a basis, but I say this is not the time to do that now; if the other members of the committee adopt some other plan, you can see how out of place is this motion.

Judge Thomas: I think your amendment should come after we have fixed the basis. Whatever form or organization we agree upon, we can incorporate that into the bill we take as a basis. We will all agree upon the kind of organization we should put into that bill. If we agree upon the plan of organization first, then we shall necessarily have to agree upon the bill we will put it in afterwards. It seems to me it is more logical to determine which bill is to be the basis then determine the plan of organization; that is one of the details, and it seems to come in better afterwards.

Mr. Guerin: I will ask the gentleman whether the only difference between these code bills, is not in the organization of cities and villages, and when we take a code and make that the basis, if we are not practically asking the members to agree to that organization?

Judge Thomas: That is not the only question—the only difference.

Mr. Stage: To bring out the logical necessity of proceeding in a different manner from what is provided, I will ask if you do not believe it is true that if the committee should vote on the question of such motion as I propose, if it probably would not adopt the Comings bill as a basis for our deliberations here? Now, I want to say that my re-

marks are not directed against the Comings bill, but I think we should first decide here the constitutional question whether we are permitted to give the municipalities so-called "home rule," or whether we must, in this committee, plan an organization for all the municipalities in the state?

Judge Thomas: I don't believe the committee ought to decide abstract questions of constitutional law in this way, and the motion of the gentleman brings before us the abstract question of whether this particular organization is or is not constitutional. Now, that question is really involved in the determination of the question made by the gentleman from Hancock. I do not believe a question of that kind ought to be injected into the proceedings of this committee. We are not sitting as a court, but as a legislative committee to determine upon some form of legislation we propose to enact. That is a question that, whatever the opinion of the members may be, individually as to the constitutionality, may be involved in the manner in which we vote upon this question.

Mr. Gear: While I am perfectly willing to vote for a motion, with the proper amendments, that we should take the governor's code, or the Comings code, as a basis, yet I think it goes out all over the country through the newspapers that we have voted to do that, it will be construed to mean that we have adopted that code. After we vote upon that, then comes up the motion of the form of government, whether by the board, or single head of department plan. The great fight, as every one knows, has been as to the form of government that we are going to give to the cities. I don't care whether it is the Guerin, or the Nash or the York or the Chapman code, I believe we ought first to determine whether we are going to have the federal plan, the board plan, or any other plan; then after that say what code we shall adopt as a basis. I am not ready to vote upon the question proposed, to say that I voted to take the Nash code as a basis, and then say that I voted for some other plan, or some other code with quite a different plan.

Mr. Willis: Will the gentleman yield to a question? Is it your idea that the Comings code should be the basis of our deliberations?

Mr. Gear: Yes; provided that we first settle the point raised by Mr. Guerin. We should settle whether or not, as a committee, we will take the board plan, or the single head of department plan — settle that question first.

Mr. Willis: If you think this ought to be the basis, don't you think it would be more logical to determine first the foundation, and then determine the details of the superstructure?

Mr. Willis: I don't want to be bound one way by my vote in this committee, and then in another way, too. I say, if the committee by a majority vote, can determine what this plan will be, then I am perfectly willing to take House Bill No. 5 as the basis upon which to work. If we vote upon that as the basis, and then you take the Nash code in its provision for the organization of cities, the board plan, you have so far voted on that plan. It is the plan of government for the cities that I want to vote upon first.

Mr. Worthington: Will the gentleman yield to a question? Can not we incorporate into the Nash code any plan for government of cities we choose, after adopting that as a basis?

Mr. Gear: This is the point: If the committee agrees upon the Nash code as a basis, and we vote upon that, when it comes to the plan of organization, and you out-vote us on that, and bring in a majority report—I won't feel like, after voting to adopt the Nash code, to go in and make a fight for a different plan. Why don't you take the plan of organization first?

Mr. Worthington: Do you think this would bind you to the Nash code, if we took it as a basis?

Mr. Gear: Oh, I don't think anything in this committee will bind my vote in the House; but I think it will be more consistent if we settle what plan we will use for the organization of cities; then take up the Comings code as a basis to work upon, after that.

Mr. Guerin: I want just a word in explanation; there is a misunderstanding about this. If we should adopt the plan of city organization proposed by the Chamber of Commerce bill, then we would use that bill as a basis to work upon; if we adopt the single heads of department plan, as provided in my bill, then I say to you, I want you to use the Nash code as a basis; but I think it is due to the Chamber of Commerce bill, and to its friends, and to all the rest of the codes, that we proceed first to the organization of cities. If you adopt the single heads of departments, as I have provided in my bill, I am still in favor of making the Nash code the basis; but if you adopt the Chamber of Commerce plan, you will have to make the York or the Chapman bill the basis.

Mr. Painter: I am in favor of Mr. Cole's motion, Mr. Chairman, because I think we must have some basis upon which to work, and I

don't think with the gentleman from Erie county, that we owe any particular code any courtesy in this matter. As far as I am concerned I do not care which bill is made the basis. We are here to pass a code for the government of cities; we have got to shoulder the responsibility, and I think we ought to do so, and I am perfectly willing that we shall do so. We can agree to Mr. Cole's motion and make the Nash code the basis of our work; I am in favor of that, and I wish to say to this committee, to prove that I am disinterested in my statement, that I propose, myself, to offer an amendment here that radically changes the Nash code, and if it is adopted by the committee — which I hope it will be — it will change the plan of government as outlined in the Nash bill; but I am in favor of the motion, for all that. I say that, gentlemen, to show you that I do not believe there is as much in this motion, or that the results will be the same as the gentlemen from Erie and from Wyandotte seem to think.

Mr. Guerin: Will the gentleman yield to a question? You say it makes no difference — you do not care — we owe no particular courtesy to any bill?

Mr. Painter: No.

Mr. Guerin: I differ from you on that, and ask you to extend this courtesy. We have extended a courtesy by opening the doors for the discussion of all bills. But why do you not wish to go to that point of the code which provides for the organization of cities, and first settle that point?

Mr. Painter: I do not object to that, at all.

Mr. Guerin: Would there not be more unanimity if the committee should settle upon a plan of organization, and then take the Nash code as a basis? If you do that, I shall vote for it; but unless you do that, I shall vote against it.

Mr. Painter: Then I don't understand your contention. I don't think there is anything in this motion that will prejudice or change the ideas of anybody, or bind them to vote a certain way. We have to have a beginning.

Mr. Guerin: What is the use of taking something as a basis? If you adopt the plan of organization set out in the York code, I will ask you whether you will need hardly a single chapter of the Nash code? In making up a code under the Chamber of Commerce code, what is the use of going to work and adopting something that will be of absolutely no use to you, if you determine upon some other form of government?

Mr. Painter: My position on that is, that we can pass upon that question after this motion is disposed of, just as well as before.

Mr. Guerin: What do you want to make this the basis for, if you are not going to need it?

Mr. Painter: There is not so much difference, you know.

Mr. Guerin: Between this and the York code?

Mr. Painter: But what we can make a basis of your code.

Mr. Guerin: I don't want that.

Mr. Gear: Will the gentleman yield to a question?

Mr. Painter: Yes; certainly.

Mr. Gear: You see the necessity for this committee to get as near the line of unanimity as possible, do you not?

Mr. Painter: Yes.

Mr. Gear: Now, if you want to put an obstruction in the way—

Mr. Painter: I don't understand this code is an obstruction.

Mr. Gear: We understand it is. Why not settle the question of the organization of cities, and then take the Nash code as a basis upon which to do the work?

Mr. Bracken: It seems to me, Mr. Chairman, we ought to settle upon the principle from which we are going to argue. We ought to settle upon the foundation upon which we are going to erect our municipalities, and then start upon our bill afterwards. As a matter of courtesy, I prefer to vote for the Nash bill; it has been the basis of much discussion, but why you should insist upon taking this bill now as the basis, rather than to adopt the principle upon which we will build, I cannot see.

Mr. Cole: Will the gentleman yield to a question? My intention was to have that question of government incorporated in this motion. If I had desired to champion what is called absolute home rule and constitutional municipal conventions—that plan—I would have made a motion to take the Chamber of Commerce bill, but I do not believe that is constitutional. When I made this motion to take up the Nash code, this question of the principle of organization was involved in the motion; and if you are in favor of the constitutional municipal convention, you will be logical in voting against this motion.

Mr. Bracken: Why not go to the question? Why determine it in an indirect way? I think the proper thing would be first to go ahead and determine the amendment of Mr. Guerin.

Mr. Cole: It is a concrete way of getting at an abstract proposition?

Mr. Bracken: I don't think it is so important to have a bill first; I prefer to take the principle.

Mr. Guerin: I would like to hear from the Speaker on this matter.

Mr. McKinnon: Mr. Chairman:—It does not seem to me to make so very much difference which of these motions carry, if you understand aright what will follow. I do not think the adopting of the Nash code as a basis, just now, is going to change the result in any way, as to what the committee may see best to do in its future action. On the other hand, I don't think it would make any difference if you should decide first on the form of government. I know that I, for one, feel that as to the adoption of any of these codes, the governor's code, or any of these codes—I do not want it considered that that is to preclude the amendment of that code in any way whatever. It does not make any difference, if you say the governor's code, if there is a single idea in there that you think is wrong, you want to strike that out, and put in what you think is right, and what you believe to be right; and I think if all the members of the committee understood that that would be the policy—whether by this motion you take the governor's code, or not—that they are to have perfect freedom, in adopting this code—I think they would not have the same feeling about it. I sincerely hope the committee is not going to split up on this, to begin with, and I really cannot see how your contention is so material, one way or the other.

I believe the real thing to start in with, is to decide on what your basis for a municipal government is going to be, and after you have decided that, it will control your action on other parts of the code, very largely; that, of course, is one principal thing you ought to decide on very quickly, but whether you do it before or after the motion to adopt the governor's code, does not seem material.

The Chairman: Will the committee allow the Chairman a word?

The thought suggested by Mr. McKinnon, I want to emphasize, and that is, that in conversation with the governor on that point of amendment to House Bill No. 5. He agreed with me that this committee, or this house, or both, upon finding anything in the bill that they thought required change, should change it; and that so far as he is concerned, his feelings will not be hurt by the changes. The committee is at liberty to change the bill, or to amend it. He has that feeling as to amendment or alteration. Personally, I have the same feeling, that when my name is attached to the bill, whatever change would be satisfactory to the members of the committee, is satisfactory to me.

Mr. Ainsworth: I felt rather as if there were a matter of courtesy due the governor on account of this bill, but that feature seems to be eliminated, and it looks to me now, as though a vote on Mr. Cole's motion would commit us to that line more than I would like to be committed at this time.

Mr. Guerin: I will say this in conclusion: If there were only two bills before this committee, No. 14 and No. 5, the motion to adopt the governor's code as a basis, would be all right; but what is the use of adopting it, if the majority of the committee shall hereafter adopt the plan set out in the York or Chapman code? Because, if you do that, you would hardly need a single chapter of the Nash code. That is my proposition. I don't see anything wrong with it as a matter of courtesy. But I think the amendment ought to prevail.

Mr. Cole: I rise to a question of information: I would like to know what I mean by my motion, Mr. Chairman? I do not expect to be committed by any plan of government here to vote for it later, but I expect to be absolutely free to champion whatever plan or form of government I believe in, and I can assure you that I am going to make some very material amendments to the bill myself.

At this point, it was moved and seconded, that the rule permitting only five-minute speeches to motions in committee, be suspended. On vote, the motion carried.

It was moved and seconded that the rule providing that no member shall be allowed to speak more than once, be suspended. On vote, this motion carried.

Mr. Gear: Mr. Chairman, I hope there will be no plan by which, from the very start here, it will go out seemingly that there is a division. I want to say to the author of this motion that if he will include in his motion that we shall first prepare a plan for the organization, and then that the governor's code shall be the code used as a basis — then I am perfectly willing to vote for it, but I am not willing to vote to take any plan, either the Chamber of Commerce, the Guerin or the Nash, and then afterwards, perhaps, be compelled to come in with a minority report upon the question of organization.

As I said before, the whole question, the whole contention has been upon the matter of organization, and I think that is a principle, and it should be the policy of this committee to first settle that question, whether it shall be the single head, the board, or whatever plan it is — I think that is the question we ought to settle in this committee. I want to say

to you, gentlemen, if you undertake this now, right from the start, there will be a feeling upon this question; I should dislike to see this question voted down; because then it would go out that the committee, as a majority, disapproved of the Nash code as a basis. I hope you will first settle the question of the organization; then after that, that the governor's code shall be the basis.

Mr. Worthington: Isn't it pretty well understood by the members of the committee that they all reserve the right to amend the Nash code, if they see fit?

Mr. Gear: Certainly; we have that constitutional right on the floor of the House.

Mr. Worthington: Then what is your contention?

Mr. Gear: That we want to start out with as much unanimity as possible, and not be committed to any questions.

Judge Thomas: In view of the fact that Mr. Silberberg, of Hamilton, Mr. Williams, of Hamilton, and Mr. Chapman, of Montgomery, who represent two of the largest cities of the state, are not present, and that it is now after twelve o'clock, I move that this committee rise to meet again at 1:30 o'clock, when we can take up this matter.

Mr. Guerin: I second the motion.

Mr. Stage: Before that motion is voted upon, I would like to explain my position. I am not in favor of Mr. Cole's motion, at this time, nor am I in favor of the motion of Mr. Guerin, that we should discuss the organization of cities, but my position is a larger one. We are not a court here, but every man on this committee must, in his own mind, determine the large question of the constitutional necessity, or possibility, of these two different modes of proceeding. That is the first step. Having decided that, it is immaterial which one of the bills we take. Therefore, I say positively that at this time I am not in favor either of the motion of the gentleman from Hancock or of the gentleman from Erie.

The motion to recess was put to vote and carried.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

SEPTEMBER 15, 1902.

MONDAY, 1:30 P. M.

The Special Committee for the consideration of Municipal Codes met pursuant to recess, Mr. Comings presiding.

On roll-call the following members responded:

Comings,	Denman,
Painter,	Hypes,
Guerin,	Willis,
Price,	Gear,
Cole,	Stage,
Metzger,	Bracken,
Thomas.	Ainsworth,
Chapman,	Maag,
Silberberg,	Huffman,
Worthington,	Brumbaugh.

Mr. Guerin: Mr. Chairman, I will withdraw the motion I made this morning, and I desire to make the following motion as an amendment to Mr. Cole's motion: That after the adoption of the Governor's code as a basis, this Committee at once proceed to the determining of the nature and character of the organization of cities, and that that matter be disposed of finally, before any other business is transacted; that when thus disposed of, the Chair appoint a sub-committee of three members from this committee to work out the details in line with the position of the Committee on that subject.

Mr. Cole: I accept the amendment, and will second that motion.

The Chairman states the motion to the Committee, and upon vote, the amendment carried.

The Chairman: The question is now on the original motion to adopt the Nash code as a basis of work for this Committee.

On vote the motion was declared carried.

Mr. Hypes: Mr. Chairman, since the Nash Code has been adopted as a basis, I move that the Chair appoint a committee to secure from the Senate such amendments as that body has made to the Nash Code, for the purpose of comparison.

The motion is seconded and carried.

The Chair appointed Mr. Hypes a committee of one to carry out the purpose of the motion.

The Chairman: The Nash Code having been adopted as a basis, under the motion, the Committee will now proceed to the subject of the organization of cities.

Mr. Bracken: Mr. Chairman, I move that the whole matter of the form of government of cities be submitted to the vote of the municipalities, through a constitutional convention.

The motion is seconded.

Mr. Bracken: From all the information received through the papers, and from a great many of the speakers, it appears to be a general desire on the part of the voters of the municipalities that they shall be permitted to frame their own government. I know that in the past, under the old constitution, there was considerable objection because at that time we were very much scattered, and the means of communication were very poor, and it took a great deal of time for one community to communicate with another, and the tendency of course, at that time was for small and numerous cities. Now, with the rapid transportation and the drift of population toward the cities, the objection to a great number of cities must necessarily pass away. With the present ratio of growth, it will probably be but a short time until the great State of Ohio will be covered by a number of great cities. In that case, allowing the people to choose their own government would not be open to the objection of such great diversity; on the contrary, we would have great centers of population, who would be busily engaged in devising ways and means to govern these great central bodies; so that I believe it would be the proper thing for this committee to turn this matter over and allow the cities to form their own government, in order that we might have that education along governmental lines so needed, and at the same time give the people that absolute freedom which they seem to seek.

I have no doubt that the members here, almost to a man, if they believed that the constitution would permit that plan, would adopt it. It seems to me the most rational and the most reasonable, and for myself, I would be willing to take the responsibility of believing that that propo-

sition is constitutional, and for that reason, I make this motion, and I hope that this body will go on record as being willing to trust the people to form their own government and to manage their own affairs.

Judge Thomas: I want to say just a word. I expect to vote against this motion, not upon the ground that I have any fear of trusting the people with the formation of their city government, but because I believe that the constitution, as it is at the present time, will not sustain it. The legislature have no authority to delegate such a power as that would be, to the people. Believing that it would be overturned by the Supreme Court, if we should adopt a form of organization of that kind, that we would have our labors all to do over again, I am of the opinion that it would be useless for us at this time, to adopt such a form of organization.

This is a representative government; the constitutions of the several states, as well as the federal Constitution recognize that fact.

The legislative power of this state is by our Constitution delegated to the Legislature. I do not believe that the legislature can delegate that power, except so far as it is necessary to pass ordinances and by-laws in relation to local affairs, even to the councils of our cities. There are certain local forms of organization that I believe can be delegated in part, but when the great question of the form of organization comes, I believe it must be worked out by the General Assembly. Therefore, believing as I do upon the constitutional questions, I shall be forced to vote against the motion of the gentleman from Franklin.

Mr. Price: Gentlemen of the Committee: I shall not take a great deal of your time, but as I said some time ago, I reserve the right to change my mind upon any proposition of law when the fact—and by the fact, I mean where a thing—can be of practical utility. I likewise said at that time that if the advocates of the different codes would understand each other there would be but very little difference between them. At that time, I had not closely examined what you call the Chamber of Commerce bill, in other words, the Chapman bill. I have talked to Judge Okey, also to Mr. Foote and some others about it, and questioned them, in the first place as to the constitutionality of the principle, and Judge Okey and Judge Stewart seemed to be firmly rooted that it was constitutional, and without noticing the location of their constitutional convention, in the bill, I revolved the principle in my mind and located it for myself, without knowing where they located it, within the organization of the municipality; or, in other words, I located it as coordinate—not altogether co-ordinate, but as a superior legislative body, in the organi-

zation of the municipality, to what we might call the common council; and it was not until last week that I noticed that by the provisions of their bill, they had placed the constitutional convention without the organization of the municipality, instead of within, and I shall not stand here and advocate to-day that placing the constitutional convention without the organization is a compliance with the Constitution of Ohio, as it is; but the constitutional convention or whatever we wish to call, located within the municipality, being a little superior in its effect and in its workings to what we know as council, is a constitutional, legislative body, and if the constitutional convention is located as I have suggested, then that body becomes constitutional in that provision, and there is no question in my mind about that. In other words, if we adopt a bill providing for a mayor in a municipality, and a council, and then for a council of administration,—that is a superior council; a common council and a council of administration, then you have, in my judgment, a constitutional bill, and it was that point I had settled for myself without having examined the specific bills.

Now, then, there are some things about that form of municipal government that are worthy of consideration, and I shall not take any stand absolutely for it. I think that every one would agree that we should have a mayor of the municipality, and every one would agree we should have a council; every one would agree we should have a treasurer and a clerk, and that is going further than the minimum organization required by our constitution. I think if we would enact a law saying that a municipality should have a mayor and a council, then make the provision, under the other sections, for a police court and different officers, and adjourn, we would have a perfect organization, within the law; or in other words, the functions of municipal government would be differentiated, and by that I mean simply that the legislative and administrative powers would be separated, and the lodgment of those powers within the proper officers of the municipality would be accomplished; but I am not advocating so simple a form of government as that; I would go further. Now, suppose we come down to what is called the council of administration; suppose that we put in a law that the council should create and classify the municipal public service into certain departments, and those departments set out as to what they should be, and that they may provide that those departments may be presided over by boards, or by persons, either as agents, superintendents, etc.—then you have a flexible form of government that will adapt itself to every city in this state.

There is no question about it — that would be constitutional. The legislature must make the minimum of organization that the constitution requires, or else the supreme court will upset it; there is no question about that. A council alone would not fulfill the requirement, nor would a mayor alone, because the functions of government are not differentiated, not located.

If we have done that, we have complied with all the requirement of the constitution. When we do that, the supreme court will say that that is a sufficient organization. But it is within the province of the legislature to go further than that and still be perfectly consistent with the constitution. You can go to any extent you desire; you can provide a treasurer and a clerk; you can even provide by legislative act, for those who work it out. Now, then, if you create a mayor and a council and call that an organization, and then confer power upon the council to go ahead and work out the administrative machinery, the council is not organizing the municipality, in any sense of the term. The constitution of the state of Ohio provides a complete organization of the state government, and when you, as members of the legislature, create the offices of insurance commissioner, or of mine inspector, you are not organizing the state government; you are just simply supplying the deficiency, for the purpose of assisting the organization already made by the constitution, in providing the features that are required under our constitution. If we should provide for a mayor and a council, and then give power to them, either by ordinance or otherwise, to provide for other officers, and that those officers may be elected or appointed, as you will either one — you are not organizing the municipality — you are just simply giving the council power to work out, in its own way, the functions that a municipality has to work out, and the mayor is sitting supreme as the executive officer, and the council, as the legislative.

Now, I use that, in its simplest form, and I am clear in this one principle, that I am hostile and averse to any complicated machinery that will be too heavy for the smaller cities, and too narrow for the larger cities, and I speak thus of these three codes. There is probably no code presented but what, if you would take some certain features of it, it would violate the constitution of the state of Ohio; but because the provisions of that code violate the constitution is no reason for saying that the whole principle is wrong, or that the bill in its aim and object, violates the constitution of the state, and the men who have said that the Chamber of Commerce code is unconstitutional, for some reason or other have failed

to say why it is unconstitutional, but I will say it here to this committee — why is it unconstitutional? Inasmuch as it places the constitutional convention without the organization, and not within the organization — and there is the whole fault of the thing in theory. It is a matter that can be remedied by placing it within the organization of the municipality; but it is not constitutional, if located where it now is.

Mr. Hypes: As the committee all know, I am not a lawyer, and if I were, could hardly speak to the subject as fully as the gentleman who has preceded me; but I hold in my hand a communication from a gentleman very high in legal attainments, Judge William H. West, and I shall read the committee his opinion on this matter:

Mr. Brumbaugh: Mr. Chairman:—During our sessions, I have taken very little time before this committee; I do not remember of having spoken more than twice before this, but I wish to say just a word at this time. I have not sought to take your time, for this reason — because I felt the members representing counties having the larger cities were more directly interested in the formation of this code than I, for this reason, that if we adopt a code that creates too heavy a government for the smaller cities, they will seek to raise the limit. In other words, should the limit be placed at 10,000, there would not be a town in our county that would have any interest in the code. For these reasons, I have listened to what you have had to say, not seeking to influence the committee, as I felt that those representing the counties with the larger cities were more directly interested in the formation of the code.

Now, in regard to this motion made by the member from Franklin, I wish to say this: Directly after the supreme court rendered its decision that made necessary the calling of this session, I said that I did not believe this matter would stop until we had a constitutional convention and rewrote the constitution of the state of Ohio. If it is not constitutional to give the cities, as nearly as possible, practical home rule, I do not believe the agitation will cease until a constitutional convention assembles, and the constitution re-written or revised, so that that is made possible for the people of the cities. Therefore, I can see no great harm in the motion made by the gentlemen from Franklin; I rather like it, and I think our friends, in the future, will come to that point. What its practical effect may be at this time, I do not consider. We are not passing a code that will last twenty-five or fifty years; I believe its life at the longest will be, possibly, eight or ten years, and I do not consider this matter very material either way, whether it carries or whether it

loses, on that account. I am giving my views about this matter; but I have no hostility to the motion made by the honorable member from Franklin, because I believe the trend and effort for the future will be toward the point indicated by the gentleman in his motion.

Vote by roll-call is demanded on motion.

Mr. Chapman: Mr. Chairman, I wish to explain my vote on this motion. I introduced by request a bill which contains the principle set forth in the motion of the gentleman from Franklin. I have studied that matter, since I introduced that bill. (House Bill No. 10). At that time, I thought the bill was unconstitutional, and I still think it is unconstitutional. I believe that the principle of home rule is all right; but if we cannot do it under our constitution, I do not think it is safe, at this time to attempt to pass any other than a law which we are sure will be constitutional; therefore, Mr. Chairman, I shall vote "no."

On roll-call the vote resulted as follows:

Yeas: Price, Gear, Stage, Bracken, Ainsworth, Maag, Huffman, Brumbaugh, Sharp.

Nays: Comings, Painter, Guerin, Cole, Metzger, Thomas, Chapman, Silberberg, Worthington, Denman, Hypes, Willis.

The motion was declared lost.

Mr. Thomas moved that the committee proceed to the consideration of the legislative department.

Motion seconded.

Mr. Stage: Mr. Chairman, I desire to say just a word before we proceed. We have had some discussion before the committee as to the necessity of providing a line of demarkation on the basis of population. Now, it strikes me before we leave this section 72, that we should settle the line of demarkation, whether or not there is a necessity for a line of demarkation on the basis of population.

Mr. Brumbaugh: Mr. Chairman, personally, I should like to see that question left until we have determined the form of government; it will then give the different cities a choice, and we shall all hear from our constituency as to where they wish to be, whether they wish to be villages or cities. Personally, I would like to see that question left, until the form of government is determined.

Mr. Guerin: Will the gentleman yield to a question? Will you tell me what possible bearing the organization of the city council and the apportionment of members can have upon the question of demarkation?

Mr. Brumbaugh: That is not the only question that will come up; there are several questions that will come up; this one particular phase is not the only question that will come up, Mr. Guerin. I want to know what the smaller cities have to contend with before I vote whether my city shall be a city or a village.

Mr. Thomas: I did not intend in my motion to designate the number of members of council now; I simply wished to go to that department so that we could take up the sections and read them over, and if there are changes desired, we can make them.

Mr. Gear: I understand that the sub-committee to which has been referred the organization of villages, or village government, unanimously report that that feature be eliminated from this code, and that we go under the general law. If that be true, it is going to pave the way very easily for some of us, who have town of 5,000 or 6,000, in our sections, to allow them to elect whether they will be villages or cities. We can ascertain that when we know the plan of organizations for cities.

Mr. Thomas: I would like to explain that in my motion I only desired to take up the organization of cities; this does not affect the organization of villages, of course.

Mr. Gear: In my district now, the general understanding has been that the line of demarkation would be drawn at a certain population. If the villages are to be eliminated from this code, then in towns of five or six or seven thousand, we can fix the line to leave them in the village class. I am requested by the whole district, the 31st senatorial district, except the town of Tiffin, that they be put in the village class. If that is true, it marks exactly what kind of government the cities want or ask.

Judge Thomas: I don't want to take too much time, but I wish further to explain that I believe the villages and the small cities can better determine what form they want when they find out what the legislature has really decided to adopt as the form of organization. When we get through with this bill the organization may be so simple, and with so little machinery that every city above 5,000 will want it. Now, to decide the question of demarkation at this time, might be to decide that question before we would know whether they would want it or not; therefore, I think we can proceed with the form of organization, and then determine on the question of population.

Mr. Gear: My idea was to get the action of the sub-committee on the elimination of villages from the code, before the people; then the people generally would know where they wished to be.

Mr. Guerin: I want to say my idea about the organization of cities is simply this: If we can provide that every city shall have a council and decide the apportionment, then go straight over the executive department of the city government, determine whether we shall have a mayor, a president of council, and the heads of these departments, and how they shall be elected or appointed, and the general scheme of government, then allow this sub-committee to work out the details in the light of the wishes of the committee, it seems to me it would be the wiser plan. There is no need of spending time here in reading over every one of these sections, until we decided first whether we will have the board plan of government, or the centralized form, or whatever kind we adopt. It seems to me the first question to be considered is this, and that we will save time if we proceed to it, without going over every section of the code. I therefore move that we proceed to apportion the council, fix the number, then go to the executive department, decide on what officer we shall have, what shall be their duties, whether they shall have a divided responsibility, or a centralized form of government, and the general powers of these officers, and leave the details to be worked out by the sub-committee.

The motion is seconded.

The Chairman: The chair understands that the question is now on the motion of the gentleman from Erie, that in a general way we proceed to follow this chapter 3, organization of cities, decide first the legislative department, and then go to the executive department.

On vote, the motion is lost.

The Chairman: We will now proceed to section 72, chapter three, organization of cities, to the legislative department.

Mr. Worthington moved that Section 72 be adopted.

Mr. Willis seconded the motion.

Mr. Stage: Mr. Chairman, this brings us exactly to the difficulty of which I spoke, on the question of the line of demarkation. If it is constitutional for this committee, or rather, for the house, to pass a law which shall provide for the organization of cities, if we accept the report of the sub-committee, the law relating to villages being left as it is,— if it is constitutional for us to leave it to municipal corporations to choose which form they will go under, whether city or village—if

that is constitutional, as I have heard members of this committee say they think it is, then that takes away one of the great difficulties under which we have been laboring in the preparation of this code. Section 72 leaves the line of demarkation as a basis upon which the number of council is provided for.

To bring that matter before the committee, Mr. Chairman, I move you that the motion of Mr. Worthington be so amended that the line of demarkation be stricken out in section 72.

Mr. Brumbaugh seconded the motion.

Mr. Willis: I should like to know what the effect of the adoption of that motion would be. I cannot see why we can't pass over that until we see what the line of demarkation will be.

Mr. Stage: It is just this point, that if we want to recast this section, we ought to settle the line of demarkation now.

Mr. Worthington: If we decide to have the line of demarkation 10,000, would it not be very easy to amend, inserting seven, eight or ten thousand, as the case might be? It seems to me that a council of seven would not be cumbersome for any municipality of 5,000.

Mr. Gear: Mr. Chairman, I desire to offer an amendment to the amendment: I move that in line 771 of section 72, strike out only the word "five" and insert the word "seven."

Mr. Chapman seconded the motion.

Mr. Gear: The reason I make this amendment is, that if we fix the line of demakation now, it will become known that we have fixed that line, and we shall then hear from our constituents in the matter, and know their wishes.

Mr. Denman: Mr. Chairman, I am unable to see why the section here should be changed, no matter what the line of demarkation is. There will always be in any city an original 5,000. This will give a very fair representation to any city; the only question is whether you want a larger or a smaller representation; the matter of putting it in or leaving it out is immaterial.

I want also to speak about another matter; that is the question as to whether these officers are to go in at one time and out at one time, or at different times? I don't, just at this moment, exactly remember the provision for that. This does not make any provision whatever for the first election. I am thoroughly convinced of the advisability, and before the matter is finally passed upon, shall make a motion that one-third of the members be elected for three years, one-third for two

and one-third for one year, so that there will be at all times a residue of experienced men in the city council. I submit that the proposition as it stands here does not provide for any rotation in office; they would all go in and be elected at the next spring election, and when their terms expired, other new officers would be elected.

The Chairman: The chair would suggest that, inasmuch as there are a number of members absent, who desire to be heard in regard to this section, we pass it temporarily.

No objection being made, the section is passed temporarily.

The Chairman: The next section for consideration is section 73.

Mr. Denman: Mr. Chairman, I move the adoption of that section, with the understanding that at any future time we may amend it in relation to the names of the officers.

Mr. Guerin seconded the motion.

Mr. Gear: Mr. Chairman, I move to amend, in line 789 by inserting after the word "redistrict," the following: "and all wards shall be as nearly rectangular in shape as possible."

The amendment is seconded.

Mr. Willis: Mr. Chairman, it seems to me we ought not to burden the bill with that kind of amendment. "As nearly rectangular as possible." Who is going to determine whether it is possible or not? It seems to me that doesn't mean anything.

Mr. Gear: This provides it shall be redistricted according to railroads, alleys, watercourses, streets, canals, corporation lines, etc. Now, instead of following the grade of a railroad, for instance, where the line might be changed by the company, at any time, or where, under any of these boundaries, the lines might be shifted, I think it would be better to make the wards as nearly rectangular as possible.

The amendment proposed by Mr. Gear is put to vote and lost.

Mr. Chapman: Mr. Chairman, I have a matter to present which seems to me to be of great importance to us especially, down in Dayton. Our council there is a tie, politically; it may be that they might disagree, or it may be that they might refuse to redistrict altogether, and for that reason I submit the following amendment:

In line 787, after the word "inhabitants," insert: "provided, however, that should council within three weeks of the date herein named, disagree or refuse to subdivide such city, the presiding judge of the common pleas court of the district in which said city is situate, shall forthwith subdivide the said city, in accordance with the provisions of this section."

Mr. Guerin seconded the amendment.

Mr. Willis: Will the gentleman yield to a question? Do you have any doubt about the constitutional power of the legislature to invest power in a judicial officer?

Mr. Chapman: I think it can give the power whenever it chooses; in fact, the legislature has power to delegate that power anywhere.

Mr. Worthington: I think this is unnecessary; I don't see how they can have a tie in council; it provides, in cities, that there shall be a president pro tem.

The Chairman: This is to be done by the present council, not by the new one; the old council, under the present organization, would redistrict.

Mr. Brumbaugh: I should think, if we were going to have some one selected to arbitrate this, in case of a tie, it would be better to vest the power in the probate judge, rather than in a district officer. If the gentlemen believe in home rule, there is no need to go away from the town, in a matter that concerns the people of the town most nearly. The probate judge is not a district office.

Mr. Gear: No; but what is true of the common pleas judge might also be true of the probate judge; the common pleas judge is elected by the district, the probate judge by the county. I do not see why this motion should prevail. When this becomes a law, if council refuse to redistrict, you can go into court and mandamus council.

Mr. Stage: Will the gentleman yield to a question? Is there any way to mandamus a member of council to vote against that?

Mr. Gear: You can, if you so desire.

Mr. Hypes: I wish to report the following amendment on this point as having been approved by the Senate. Line 792, after the word "council," insert: "In case said council fails to act under these provisions, the matter shall be referred to the presiding judge of the common pleas court of the district in which such municipality is situated."

Mr. Stage: The objections to this, I think, are because the power is left in the hands of an officer not elected by the people most closely concerned. I should much prefer that in case of a tie, it should be left to the mayor. I move you, Mr. Chairman, to amend the amendment by striking out the words "presiding judge" and insert the word "mayor."

The motion is seconded. On vote the motion is lost.

Judge Thomas: Mr. Chairman, I move to amend the amendment by inserting: "If the council cannot agree, the redistricting shall be left

to a committee of three, one of whom shall be appointed by the presiding judge, one by the probate judge and one by the mayor of the city."

The Chairman: The question is on the amendment of the gentleman from Cuyahoga.

On vote, the motion is lost.

The Chairman: The question is on the original amendment, leaving it to the presiding judge.

Mr. Maag: I move to amend the amendment by inserting "board of elections" instead of "presiding judge."

Amendment seconded.

Mr. Denman: It is not at all certain that we shall have a city board of election, or that it will be known by that name.

On vote, the motion of Mr. Maag is lost.

Mr. Stage: Mr. Chairman, perhaps we are getting into an attitude of mind that would look upon this matter in a frivolous way. I am very seriously inclined to the belief that we shall make a mistake by putting this matter in the hands of the common pleas judge, especially, where the judge is elected by the people of a district and is really not a municipal officer. I believe, upon further and more careful consideration, that the members of the Committee will agree that the mayor of the city is the proper officer, in case the council shall not agree, which would only be in very remote instances. I think the Committee will be with me on this point, and for that reason, I move a reconsideration of the vote whereby the motion was lost, and ask for a roll-call.

The motion is seconded.

The Chairman: The motion is made and seconded that the vote whereby the motion was lost which substituted the word "mayor" for "presiding judge," be reconsidered, and a roll-call is asked. The secretary will call the roll.

Mr. Worthington: Mr. Chairman, I wish to explain my vote because I wish to vote for this amendment. I think the council is the proper body to decide the question, if they are not able to reach a decision then the mayor should cast the deciding vote; he represents the whole of the city.

Mr. Stage: Mr. Chairman, I want to explain my vote. I stand out for a reconsideration for the very reason there is but one way in which the council stands at a loss, and that is the act of Division. I have no objection to your questions now merely because it satisfies me, and we are getting right on what the courts have said we cannot equal.

do. That is special legislation; and to give a judge who is elected by the people of a district, the right to redistrict a city, is, I think getting beyond what this Code started out to do. The government of these cities should be wholly within the municipality, by the officers elected by the electors in that municipality, and not by people who live, perhaps, in another county. The people elect the mayor; let him decide.

The roll-call resulted as follows:

<i>Ayes:</i>	<i>Nays:</i>
Comings,	Painter,
Metzger,	Guerin,
Worthington,	Price,
Gear,	Cole,
Stage,	Thomas,
Bracken,	Chapman,
Ainsworth,	Silberberg,
Maag,	Denman,
Huffman,	Hypes,
Brumbaugh,	Willis.
Sharp.	

The motion was declared carried.

The Chairman: The question is on the amendment, substituting the word "mayor" for the words "presiding judge."

Judge Thomas: Mr. Chairman, I would like to say a word. This is a pretty important matter, the redistricting of a city. I made a motion which was not seconded, and I now want to state the reason for that motion: The redistricting of any city ought not to be left in the hands of any one man; it ought to be done by persons either elected or appointed for that purpose, if it cannot be done by the legislative body. It has been the practice in this state heretofore, whenever the power to redistrict has been taken out of the hands of council, to put it into the hands of a redistricting commission. That has been done in Springfield once or twice, and in some other cities of the state. Sometimes this commission is appointed by the mayor, or common pleas judge, or other officer, but in every case where there has been a question of that kind to decide, it has been left to a body composed of more than one person.

Mr. Stage: May I interrupt? The objection the Judge states I can see would be proper, as to leaving this in the hands of one man, and I now suggest that instead of it being left in the hands of the

mayor, in case of a tie, that it be left in the power of the mayor to cast the deciding vote.

Judge Thomas: I do not object to that; I will withdraw my amendment.

Mr. Stage: I move to amend the amendment, "That the mayor be authorized to cast the deciding vote."

Motion seconded.

Mr. Brumbaugh: I hope this amendment will carry, for the reason that I do not think we ought to drag the court into this matter; I don't like the idea of dragging the court into a purely political matter of this kind. We would think it a foolish proposition that the Supreme Court of Ohio should redistrict the state for congressional purposes. I don't see any more reason for a court to do that for a city, than for a state. Complications would arise where cases might have to come before the judge who had redistricted.

Mr. Chapman: Let me ask the gentleman if the city, or village, of Greenville is not in the same situation, a tie in council?

Mr. Brumbaugh: Yes, it is; but I believe in looking at these matters on a broader plane than simply to help out the city.

Mr. Chapman: I don't see the difference; you might just as well let the mayor decide it.

Mr. Stage: If the gentleman will permit me, I will try to explain the difference. In one case, you leave in the hands of the judge of the court, or of the mayor, the power to get up his own redistricting scheme. In this case, the redistricting is done by council; in case of a tie, the mayor's vote decides which of the plans proposed by council shall be used.

Mr. Chapman: The plan presented in council would be the plan on which the mayor would agree; so I say it is just the same.

The question was voted upon, and the amendment to the amendment prevailed.

The question then recurring on the original motion, on vote, the motion prevailed.

Mr. Cole: I want to call attention to another feature of this Section 73. In line 796 are the words, "wards established at any time under the authority of this act shall exist for all local election and other purposes, including the election of members of the board of education, for which wards are recognized by law." I don't know just how that is going to work. We have something like sixteen members of the board of education now, elected from eight wards in the city. It occurred to me

there ought to be some provision made to change the members of the board of education, or to allow council the power to re-apportion the number to each ward. Under this act, we will have four wards in our town, and we shall have to elect four members from each ward, instead of two.

The Chairman: Does the gentleman from Hancock understand that there will be only one member from each ward?

Mr. Cole: No; my understanding is, this does not affect the board of education.

Mr. Price: This may affect the board of education, or at least, it may bring confusion. There will probably be places where there will not be as many wards as they have now. The members of the board of education do not all go out next spring. If there would not be as many wards as now, the board of education not going out as this Code provides other officers shall go out, there may be more members of the board of education under the law than is here provided, or vice versa; and that being the case, I think we would better leave the matter of the board of education clear out of this.

I move you, Mr. Chairman, that the reference to the board of education in Section 73 be stricken therefrom.

The motion is seconded.

Mr. Willis: I have not had time to think about this much, but it occurs to me that if that motion should prevail, it would disarrange the machinery for the election of school boards entirely, in those places where they provide for an election of a certain number from each ward; if we change the ward in accordance with these provisions, but do not say anything about school boards, there would not be any provision there for school boards; whereas, if we leave this as it is here, the only change would be that you would have fewer members of the school board to elect. I don't see any objection to that; I think we could get along just as well.

Mr. Cole: I don't think that would have the effect of changing the number of the school board, if we should insert this: "and council shall have the power to re-apportion the members of the school board to the wards erected under the provisions of this act."

Mr. Stage: I have just asked the gentleman from Hancock for information, by what authority the two members are assigned to each ward; he doesn't know how they are assigned, whether by council, or

under the provisions of some statute. It is possible that the law under which they operate would not be touched.

Mr. Cole: I desire to resent the insinuation against my lack of information and will proceed to inform the gentleman from Cuyahoga that my understanding is, they are apportioned by ordinance, and it was upon that proposition that I suggested this amendment.

Mr. Stage: Will the gentleman yield to a question? Do they get the power to pass that ordinance by statute?

Mr. Cole: From the discussions we have listened to in the last few weeks, I think that question is out of order.

Mr. Price: I will frankly say that I cannot state how the school board is created, whether by ordinance, or statute law; but there are school elections held in the different wards; there are so many special laws on that subject, that I cannot say. The trouble with Mr. Cole's amendment is that it does not provide that the school board shall go out bodily; if you re-apportion by wards, you might find two or three men living in one ward who held office for one year. I think Mr. Cole's amendment is subject to that difficulty.

Mr. Cole: These school wards are different in almost every city of the state, and I think we ought to have definite information on this point before we act, and I desire to move that a committee of three be appointed to investigate this matter.

Mr. Price: Then I will withdraw my motion.

The motion by Mr. Cole was seconded, and upon vote, prevailed. The Chair appointed as members of such sub-committee, Messrs. Price, Cole and Brumbaugh.

Mr. Guerin moved that section 73 be temporarily passed; the motion was seconded and prevailed.

Section 74: Mr. Guerin moved that the words "sergeant-at-arms," in line 808, be stricken out. The motion was seconded and prevailed.

Mr. Gear moved to amend, by inserting in line 812, after the word "removed" the words "for cause." Amendment lost.

Mr. Bracken moved to amend, by striking out the word "three" in line 112, and inserting in lieu thereof the word "one."

Mr. Bracken: There has been talk about increasing the terms of officers in municipalities. I have never discovered that it was a lack of time on the part of these officials, that we are troubled with, but because they had too much time. Now, we want to get at the council and our officials promptly and at short intervals, especially if we adopt

the plan of electing our mayor and other administrative officers for the term of three years. I think as council has to be purely legislative, that they ought to be elected oftener than every three years. The great trouble to-day is that we have councilmen who hold office too long. We have got to take into consideration at all times that the great fault of municipal government is not a lack of efficiency in making the laws, but a lack of honesty; the trouble with our municipalities to-day, is a lack of honest men to prosecute the business, rather than a lack of men with knowledge to do the business.

Mr. Stage: Will the gentleman yield to a question? Do I understand your amendment to apply to line 812? I call the attention of the Committee to the fact that only refers to the officers and employes.

Mr. Bracken: Wouldn't the officers include the members of council?

On motion, section 74 is adopted.

Section 75: On motion, section 75 is adopted without amendment.

Section 76. Mr. Williams moved to amend by striking out all of line 821 after the comma, and all of line 822 up to the period. Amendment carried.

Mr. Guerin: It reads here, "Any member who shall cease to possess any of the qualifications herein required, or shall remove from his ward or city shall forthwith forfeit his office." The question arises whether a councilman at large; if he should remove from that ward, would come under this provision. He might be elected from the first ward, as a member at large; if he should remove from that ward, would this provision put him out of office?

Mr. Stage: I think Mr. Guerin's suggestion is worthy of consideration. It might be interpreted to mean that any councilman at large removing from his ward would forfeit his office. It certainly could be made clearer.

Mr. Allen moved to amend by striking out the words in line 826, "ward or." Amendment seconded.

Mr. Bracken: In large cities they have what are termed "professional councilmen." They might be too unpopular to be elected from their own ward, and would move to another ward for the express purpose of being elected to council. In large cities there is a class of people who have no means of livelihood except being elected to council.

Mr. Denman: The proposition is to strike outh the word "ward," in line 826. Now, gentlemen, that would allow a man who was elected

from some certain ward to move anywhere else in the city and still remain a member of council from his ward. That ward from that time would be deprived of a councilman who would know the condition of the ward. I am certainly opposed to that amendment. I think a provision that would meet the matter would be:—"or shall remove from his ward, if elected from the ward, or from the city, if elected from the city at large."

The amendment is seconded and carried.

Mr. Gear moved to amend by striking out all in line 823 after the word "city," all of line 824 up to and including the word "militia." The amendment is seconded.

Mr. Gear: In a number of our cities, some of our most prominent men hold public office, and this would debar them from being a member of council. They are sometimes the most progressive citizens in the city.

On vote, the amendment is lost.

On motion section 76, as amended, is adopted.

On motion section 76, as amended, is adopted.

Section 77. Mr. Pric moved to amend by striking out the word "or" in line 836 and inserting in lieu thereof the word "and."

Amendment seconded and carried.

On motion section 76 when so amended, is adopted.

Section 78. Mr. Painter moved to amend by striking out in line 845, all after the comma, and all of line 846. Amendment seconded.

Mr. Guerin moved to amend the amendment by adding, "and with respect to any such ordinance or resolution, there shall be no authority to dispense with this rule except by a two-thirds vote of all members elected there."

Mr. Painter: I will withdraw my amendment and accept Mr. Guerin's.

The amendment is carried, and the section when so amended is adopted.

Section 79. Mr. Willis moved to amend by offering the amendment proposed by Mr. Gemuender, as follows: In line 853, after the word "given," insert: "and the necessary appropriation made."

The amendment is seconded and carried.

Mr. Price: There are some matters that we have not determined; for instance we have practically decided among ourselves that we shall have a board of health, but we don't know whether we want the council

to appoint, or the mayor; I am willing to pass this as approved and afterwards, if you want to amend, do so

Mr. Guerin: In accordance with Mr. Price's suggestion, and in order that we need not come back to this, I move that after the word "body" in line 849: 'except as may be otherwise provided in this act.' The amendment is seconded and carried.

Mr. Denman: It looks to me as though there is some difficulty in this section in a legal way. In line 848 it is provided it shall perform no administrative offices or duties, whatever. I take it that is of course a legal question, as to what is an administrative duty. We have given some administrative duties to council, and if at any place they perform any administrative duties, then the question will be raised by some one, that the action is illegal.

On motion, section 79, as amended, is adopted.

Section 80. On motion, section 80 is referred to a sub-committee composed of Messrs. Denman, Maag and Chapman.

Section 81: Mr. Gear moved to amend by striking out in line 869, after the word "it," all the rest of the line, and the first two words of line 780.

No second.

On motion, section 81 is adopted by the Committee.

Section 82: Mr. Guerin moved the adoption of the section.

Mr. Bracken: A delegation appeared before us, representing a great body of laboring men of Cuyahoga county, and in their representations, they desired that we pay weekly, instead of monthly. They said a great many of the employes of the municipality are compelled to go in debt, but that if they had weekly pay days it would be a great saving to them.

I therefore move you, Mr. Chairman, that we make it semi-monthly, instead of monthly. In line 887 before the word "monthly" insert the word "semi."

The amendment is seconded and carried.

Mr. Willis: It has been suggested that there may be some question about lines 881 and 882. "The salaries so fixed shall not be increased or diminished during the term for which any officer, clerk or employe may have been elected or appointed." Now, the words there would preclude any change in the salaries at all; that is not the intention.

Mr. Guerin: Certainly it is the intention.

Mr. Price: If you follow the constitution on that question, you will get at it. The constitution says that the legislature shall create all of-

fices and shall fix their compensation. Now, the rest of it is, "But no change in the salary of any such office shall take place." While that is not exactly germane to the amendment under consideration, I want to speak about this: The idea of fixing the rule of compensation by which the council in a small municipality, may go to the extent of paying themselves \$1,200 per year salary, is not very judicious, to say the least. It would be like framing a law saying that the auditor of a county might have his salary fixed by the commissioners, not to exceed so much. The rule of compensation for councilmen ought to be based on population, and that has been held good,—that is cities having such a population, council shall receive salaries of so- and-so, rather than to throw open this wide gate for a council of seven, in a small city, to fix their compensation at \$8,400, if they chose. I think that would be an unwise rules of compensation.

On motion, section 82 was referred to a sub-committee of two, to determine as to the compensation of councilmen. The Chair appointed on such sub-committee, Messrs Price and Painter.

Section 83.

Mr. Stage: The same question arises there as Mr. Denman brought up in reference to the administrative duties. I will call attention to it now, and make it a part of of the record. Section 79 says: "The powers of council shall be legislative only. It shall perform no administrative duties whatever and it shall neither appoint nor confirm any officer or employe in the city government except those of its own body." Section 83 says: "All acts or ports of acts which apply to all cities in the state which are not inconsistent herewith, and confer powers or impose duties upon the councils of cities, and all those which limit or restrict such councils shall be and remain in full force and effect; and all powers conferred by this act upon municipal corporations shall be exercised by council, unless otherwise provided herein." Now, it seems to me there might be a conflict between those two acts.

On motion the section is adopted.

The committee recessed to 7:30 P. M. of the same day.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

Monday, September 15, 1902.

7:30 P. M.

The committee met pursuant to adjournment, all members being present.

Section 73. Mr. Thomas moved a reconsideration of the vote on the amendment by Mr. Stage at the afternoon session by inserting the words, "That the mayor be authorized to cast the deciding vote."

The motion to reconsider was carried, ayes 14, nays 7.

Mr. Chapman moved the following amendment to section 73:

In line 787, after the word "inhabitants" insert the following:

"In case the council shall fail to divide the city into wards, as hereinbefore provided, before the first day of February, 1903, then a commission, consisting of the mayor of the city and two other citizens of such city, to be appointed by the common pleas court of the county in which such city is situated, shall proceed forthwith after their appointment to redistrict such city into wards, in accordance with the provisions of this section. The commissioners shall deposit a certified copy of the description of the boundaries of the wards as established by it with the city clerk who shall immediately record the same in the record book of general ordinances of such city, and such redistricting shall have the same force and effect as if made by ordinance of the council."

Mr. Denman suggested that the amendment be made to read "judge or judges of the common pleas court," etc., and this was accepted by Mr. Chapman.

Mr. Bracken moved as a substitute that the matter be placed in the hands of the election board having charge of the municipal election when this act takes effect.

Mr. Willis moved that the matter be referred to a committee of three to be appointed by the chairman. Carried. The chairman appointed Messrs. Willis, Silberberg and Chapman.

Mr. Gear moved that the committee report forthwith

Mr. Thomas moved that the motion by Mr. Gear be laid on the table. Carried.

Section 84. Mr. Thomas moved that this section be passed for the present. Carried.

Mr. Guerin moved that the centralized form of organization for cities, with single heads of departments, be adopted as the basis upon which the committee shall work in the organization of cities.

Motion lost, ayes 11, nays 12.

Mr. Williams moved that in the organization of cities the board plan as laid down in House Bill No. 5 be adopted.

Motion lost, ayes 3, nays 20.

Mr. Painter moved that it be the sense of the committee that there be single heads of departments elected by the people.

Mr. Price moved as an amendment that the various heads of departments be taken up singly and the question voted on as to whether they should be elective or appointive.

The amendment was carried and the motion as amended was adopted.

Section 85. Mr. Guerin moved that section 85, from line 905 to line 906, inclusive, be adopted.

Mr. Metzger moved to amend by striking out the word "three" in line 903 and inserting the word "two."

Amendment carried.

Mr. Willis moved to strike out all the words following the word "corporation," in line 905 and all of line 906.

Mr. Denman moved to amend by substituting the word "three" for "five" in line 905.

The amendment was lost and the motion of Mr. Willis carried.

The consideration of the remainder of section 85 was reserved.

Section 86. Mr. Gear moved that in line 918 the word "two" be substituted for the word "three," and also that after the word "corporation," in line 919, and all the words preceding the word "election" in line 920 be stricken out. Carried.

Mr. Worthington moved that section 86 be adopted as amended.

Mr. Gear moved to amend by inserting after the word "elected," where it first appears in line 918, the words "by the electors of the municipality."

Amendment adopted and motion as amended carried.

Section 87. Mr. Guerin moved that section 87 be amended to read as follows:

Section 87. (Director of accounts.) "The director of accounts shall be elected by the electors of the municipality for a term of two years, and

shall serve until his successor is elected and qualified. He shall be an elector of the corporation."

Mr. Williams moved as an amendment that section 87 read as it is in House Bill No. 5 down to and including the word "corporation" in line 932.

Amendment adopted and original motion as amended carried.

Section 89. Mr. Gear moved that the word "two" be substituted for the word "three" in line 978 and that all after the word "corporation" in line 979 and all of line 980 be stricken out.

On motion of Mr. Cole the consideration of section 89 was reserved.

Section 90. Mr. Brumbaugh moved that section 90 be amended so as to provide for the election by the electors of the municipality of a city solicitor for a term of three years.

Mr. Chapman moved to amend by substituting the word "four" for "three."

Mr. Gear moved to amend by striking out the word "four" and inserting the word "two."

Mr. Chapman withdrew his amendment and Mr. Gear's amendment was carried. The motion as amended was then carried.

Mr. Brumbaugh moved to reconsider the vote, and the motion was lost, ayes 9, nays 14.

Section 91. Mr. Painter moved that in every city there shall be a director of public works who shall be elected for a term of two years.

Mr. Williams moved as an amendment that there shall be five directors of public service, who shall be elected for a term of three years and shall hold their office until their successors are elected and qualified.

Mr. Hypes moved to amend the amendment by inserting the word "three" in place of the word "two."

Mr. Williams accepted Mr. Hypes' amendment.

The amendment of Mr. Williams was lost, ayes 3, nays 20.

The question being now on the original motion of Mr. Painter, Mr. Denman moved to amend the section so as to read that in every city there shall be at the head of the department of public service a director, provided, however, that when the council in any city shall by resolution declare that it deems it necessary that the city shall have more than one director, the mayor shall issue his proclamation for the election of such number as the council may name, at the next municipal election.

The question was pending when the committee adjourned to meet at 9:00 a. m., on Tuesday, September 16.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

September 16, 1902, 9:00 o'clock A. M. Tuesday.

The special committee for the consideration of municipal codes met in the finance committee room, Mr. Comings presiding.

On roll call, the following members were present :

Comings,	Worthington,
Painter,	Denman,
Guerin,	Hypes,
Price,	Willis,
Cole,	Gear,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Chapman,	Maag,
Allen,	Huffman,
Silberberg,	Brumbaugh.

Mr. Stage moved that the sessions of the special committee be during the following hours: 9:30 a. m. to 12:00 m., 2:00 p. m. to 5:00 p. m.

The motion was seconded, and on vote prevailed.

The Chairman: The chair wishes to suggest that the sub-committees to which have been referred various sections and questions, should get in their reports at as early a date as possible.

The Chairman: The committee adjourned pending a motion made by the gentleman from Lucas relative to the board of public service, the motion being that the board of public service be elected, consisting of not less than one nor more than three members. That motion is before the committee.

Mr. Guerin: Referring to that matter, I was somewhat amused as well as surprised at the remarks of the gentleman from Huron when he made the statement that no lawyer of any repute or standing would contradict the statement he made. Whether or not the question was asked of Mr. Hogsett or Judge King in their remarks before the committee, I

don't remember, but I do know that on a great many occasions I have asked each of those gentlemen, as well as Mr. Wade Ellis and others who have paid attention to the law involved in the construction of the municipal code, that very same question, and upon each occasion, those men have said positively and unequivocally that that could not be done constitutionally. If you give the council the right to create an office, you have a right to say to council, "You shall not have the office if you don't want it," and if that principle of law is correct, I am in favor of providing for the creation of a council and the election of a mayor, and saying to the city council just exactly what you say to each of the departments, "When you want an office you can create the office and provide for the election of an officer, and when that is done, your administrative functions cease, over that department." Now, I say that if Mr. Denman's proposition be true, that can be done; and if it can be done, and bring about that degree of flexibility, the best thing this committee can do is simply to provide for the election of a mayor and council, give them the administrative as well as the legislative functions of government, provide they can establish the offices they want, and when they have provided that, and given over the power to administer the affairs of the city to that one department, and provided for the election of a head, — then their administrative functions cease so far as that department is concerned. There is no question about it, if the option can be given to council to provide for more than one officer for a certain department, they have got a right not to have that department at all, and if this committee wants to adopt a rule of that character, let's do it in the easiest way; let us give to the cities, large and small, in this state the right to create such departments as they need in the affairs of their city government — simply have the legislature stop with providing a mayor and a council, for we are told, we can constitutionally do that.

The reason why the city council cannot create departments with relation to the board of public service, is because they are not an administrative body. The board of public service has conferred on it by House Bill No. 5, the responsibility of seeing that the streets and the affairs of the corporation generally are properly administered, and for that purpose, to hire such employes and create such departments as they need; they say they can do that, being the administrative branch of the city government; but the council cannot do it, because it is the legislative branch. Now, let us combine the board of public service and the council

together, and say to the council, "You are the legislative and the administrative part of the city government; you can create such departments as you want; provide for the election of directors, and when you have created the department and put the director in there, then your administrative function over that particular department shall cease," — and I say to you that if Mr. Denman's proposition is true, you can undoubtedly do that.

Now the people of Ohio, without regard to party, are crying for home rule, with the greatest amount of flexibility you can get in the municipal code.

I do not believe that that would be constitutional, myself, but whether it would or not, it is just as constitutional, and on the same line of the suggestion of the gentleman from Lucas.

If what this committee is after is to frame a government that will fit Cincinnati, let's do it and have it stand on the books, and not frame one that will be declared unconstitutional by the first court to which the code is taken. If you want to frame a government for Toledo, let's do so; but don't let us spend our time here doing something about which there is any question from a constitutional standpoint. My own opinion is, that the only safe thing to do at this time is to adopt those measures and those rules concerning which no constitutional questions can be raised; it is not a time for the legislature to run experiments here; we have been in that business for a while. What we want is a municipal code concerning which there can be no question as to its constitutionality; that is what we want, and I say to you, I don't care what the proposition may be, if there is any doubt about it — and I would as soon have the opinions of Judge King, Mr. Hogsett, Mr. Ellis and Mr. Longworth, as I would the opinion of the gentleman from Lucas, without saying that his opinion is not good — but I say when good lawyers differ concerning these things, the legislature should simply pass that proposition by. This is not a time, as I have said before, to run any experiments, or run any chances, and if Mr. Denman's proposition be true, let us do as I suggested awhile ago, form a government with simply a mayor and a council, with power to create and abolish offices, and that will solve the whole problem.

I don't care to take up any more time, but I simply want to reiterate what I said before, — where there is a question raised, let us pass it by, whether it suits the gentleman from Lucas and his constituents, or those from the Queen City on the Ohio river, or not.

On motion, the rule limiting the discussions to five minutes, is suspended.

Mr. Price: Mr. Guerin advances some very strange ideas. If you will turn to section 99 of the governor's code, where it says the board of public service may employ superintendents, suppose you say the board of public service may employ board superintendents, inspectors, engineers, etc., I wish to ask the gentleman from Erie what is the difference whether it is done by the board or by a single individual?

Mr. Guerin: I don't think it is any different at all; they can appoint a board as well as a single individual.

Mr. Price: Let us go further; suppose you put in there that the board of public service may appoint a board superintendent, and what is the difference between that and the word "employee?"

Mr. Guerin: Will the gentleman yield to a suggestion?—The theory, as I understand, on which they have the power to appoint superintendents, and of course, they can put two or three in the same position, is, that it is a means for carrying out the power given to them of managing the affairs of the city. No such powers are vested in the council under the Comings bill.

Mr. Price: Then the gentleman from Erie and the gentleman from Athens agree on that. Now suppose that you divide from the board of public service its administrative duties, and after you have got those administrative duties away, and look at it in a legislative sense, then I want to know if the board of public service cannot provide by ordinance, for the appointment or the election of a board of supervisors, superintendents and engineers? And why not appoint? The constitution of Ohio says that the legislature shall provide for the election and appointment of all officers. Why is it that the gentleman from Hamilton, Mr. Ellis, says that the legislature, in this case, can delegate to a legislative body of a municipality the power to appoint an officer and an agent, and cannot delegate the power that the same officer or agent may be elected by the municipality?

Mr. Painter: That is where the difference is,—one is the agent and the other an officer.

Mr. Price: No, sir; an officer created by an ordinance of the municipality, is an agent of the municipality. He is an officer. A man who is appointed engineer of the fire department is an officer and an agent of the municipality; that whole question has been before us from the beginning.

The other day in answer to a question, Judge King said he would show in his speech a little further on, that the creation of an office of engineer was not organization, but Judge King failed to come back to that question. What did he mean? Judge King, by his expression, meant this: That when the legislature had provided for certain officers of the municipality, those that would be required by the provisions of the constitution, then the council exercising the power of legislation in creating offices, or in appointing officers, is not an organization of the municipality at any stage of the game, a bit more than this legislature, when we create the office of mine inspector, or insurance commissioners, would be organizing the state government. That was the meaning of Judge King. So, when we have provided a mayor, and when we have provided a council, or when we shall provide two councils, if necessary, we can go further and provide a treasurer and a clerk and a solicitor, and after we have done that, this legislature can declare that that municipality is organized, and vest in the council of the municipality, — or, if you do not want it in the council of the municipality, then create a second council and call it the council of public service, if you will, and say that the council of public service shall meet at certain times and shall determine the number of men, and shall determine whether those men shall be elected or appointed, whether they shall be called superintendents, managers, or what not, — and I say to you that you are strictly within the provisions of the constitution, and no lawyer, when he gives it a fair and honest consideration — I mean fair and full, because they may be honest — can disagree with that proposition. There is no chance for disagreement about it, because in the last fifty years that thing has been done time after time, and suits have gone through the courts, and it was never raised by any lawyer. The question decided by the supreme court does not touch that question; it is not within a thousand miles of that question, and all of this information or supposed information given out, was for the purpose of befogging the minds of this legislature, by men who had a hand in framing codes, and who desired to see their own handiwork go through this legislature, whether it was for the advantage of the big cities or of the smaller cities — a desire to see their handiwork spread upon the statute books. There will be other fair-minded judgments upon the matter. There cannot be any difference about this. If you will take all the different administrative duties of the board of public service away, and say that board's only power shall be legislative, that it shall only provide the means, and providing the means,

the mayor shall appoint, — and provide likewise that the mayor shall appoint boards, agents, superintendents, managers — and the gentleman from Lucas is absolutely right, when that power is conferred upon the board of public service, it can exercise it, and it is within the provisions and the strict provisions of the constitution, — it could not be gainsaid, it could not be disputed by argument, by decision of the court, by precedent, by long-standing usage, any how, and by statutes that have stood upon the statute books of Ohio since 1852, when the immortal Thurman and Ranney drew the first code, when that other great constitutional lawyer, Hurd, in 1869, assembled the laws of the municipalities and the legislature adopted them. There they are written in both of those codes, never questioned in the courts and for the first time it has been questioned on the floor of this House, and questioned for what purpose? For the purpose of befogging the minds of this legislature and pushing through here something that will bear the stamp of the handiwork of some individual.

Judge Thomas: The question raised by the gentleman from Lucas in his argument, as I understand it, is not so much a question of whether the council can create an office, or whether it has not the power to create an office, as it is a question of whether the powers that are delegated by the bill that we shall pass, shall be exercised by a board of three or more persons, or whether the powers shall be exercised by one person. I take it that is the question he is trying to get at.

Now, it is said by the gentleman from Erie county, as I understand him in his argument, that the council has no power to create an office, and then it is said by the gentleman from Athens that they have some power in relation to creating or at least, vesting power. Now, I think possibly we are agreed that we can vest the power that would be placed in a board of public service, in one person, — we can vest all that power in one person, as the head of that department, or we can, in the bill, vest the powers that would be delegated to the board of public service, in three persons, or we can delegate it to five persons. I don't think there would be any question about the constitutionality of that.

But now, let us take another step in this argument. Suppose in this bill we provide for the department of public service; the head of that department shall be a single person, and then provide "but if at any time the council of any city shall determine by an ordinance, which shall be concurred in by two-thirds of the members of council, that they desire the election of a board to consist of three persons, to discharge the duties de-

volving upon the department of public service," that when and after such an ordinance should be passed, the mayor should call an election, for the selection of three men for the board of public service; that said board should be elected by the people, and when so elected, the powers and duties conferred by law upon the single individual shall, from that time forward, in such municipality, be discharged by the board of public service consisting of three persons, — I do not see where you can find anything about that that is unconstitutional. It is simply transferring the powers conferred by the law we pass here, from one kind of a board, or head of the department, to another kind of a head or department, which the law creates itself, such law being of uniform operation throughout the state, and leaving it optional with every municipality whether it shall bring about the election of a board, or shall leave the law as we pass it.

Now, upon that proposition, the supreme court have to some extent spoken, I think, in the 46th Ohio State, in the case of *Gordon vs. the State*. The court held that the legislature may provide a law and may provide certain agencies for carrying the law into operation; that the law should operate whenever a vote should be taken by the people of any township in Ohio, — that shall set the law in operation, and it does not matter whether the council, or whether the people of any township acted, or not. If they do not act, the law was nevertheless operative or nevertheless of uniform operation, upon the people of the state, and can be put in force, or not, whenever the agency that was fixed by the law should set it in motion; and whenever the people of any township should take a vote and decide to set the law in operation, it should operate from that time on as provided in the law.

Now, the legislature last winter passed a law which has not yet been passed upon by the supreme court, in which they decided the board of review question, that whenever the auditor of any county should request the state auditor, there should be appointed in any city of Ohio, a board of review, consisting of three persons; that when said board of review was appointed, the duties which theretofore had devolved upon the board of equalization in cities, should, from that time on, devolve upon and be exercised by the board of review. What is the effect of that law? What will be the effect of that law, if constitutional? That law is under contest at the present time. A case was brought in the court of common pleas of Cuyahoga county, which declared it unconstitutional; it went to the circuit court and that court held it constitutional; it is in the supreme court now, and the court has not yet passed upon the question.

What will be the result of that decision, if that law is declared constitutional? It will be that in the state of Ohio, in some of the cities, we shall have a board of review consisting of three persons, and in other cities of Ohio, we shall have a board of equalization consisting perhaps of three persons. The result of it is, that we shall not have the same instrumentality in every city operating to carry out the law which has been passed by the General Assembly. Now the question is here, whether, if we pass a law which provides that there shall be in the department of public service of every city in Ohio, a single director appointed, and that that director shall continue to exercise the duties of that department until an ordinance is passed by the city council of such city submitting the question, or calling an election, or requesting the mayor to call an election, to elect in the place of the single director, another instrumentality to discharge the duties which the director had —

Mr. Guerin: Will the gentleman yield to a question? — I want to ask you, if your proposition of law be correct, why we cannot, by a provision in this code, say to the city council of every city, "There shall be a department of public safety, there shall be a department of public improvement, there shall be a department of accounting and a department of law; you may, by ordinance, declare that there shall be one director in each of those departments, or a board consisting of as many as you desire, and that one director may be eligible to directorship in one or two or more departments." Now, tell me the difference between a proposition of that kind and the proposition that you lay down?

Judge Thomas: The difference is this: That in the proposition that you make, you leave it to the council to determine whether in that department there shall be a single director, by passing an ordinance, without putting it into the law.

I think that the law must be so that it will be operative without any action of council in the first instance; we must say that there shall be a board, a director of public safety — a director of public service, and that the department shall be controlled and its duties exercised by a single officer — you must say that, or you must say it shall be exercised by a board, one or the other; you must provide the organization and the instrumentality to carry it out.

Mr. Guerin: Can't you provide organization when you create the department and say council must by ordinance, determine, before this law goes into effect, whether it shall have a single head or a board? You are laying down a difference with absolutely no distinction, Judge Thomas.

Judge Thomas: I think there is a difference; of course, we may differ as to that. I say that the law that we shall pass must of its own force, place in operation the machinery that will exercise the powers which we confer upon municipalities. In the board of public safety, we must do that, and those powers shall continue to operate according to the bill until such time as some other agency is provided by the law itself.

Mr. Stage: Will the gentleman yield to a question? Your opinion is that the board of review is unconstitutional?

Judge Thomas: No; I think it is constitutional.

Mr. Stage: It doesn't provide the machinery?

Judge Thomas: It provides that whenever demanded, a board of three shall be appointed as a board of review.

Mr. Stage: Wouldn't this make a parallel case, that is, the legislature erecting a department of public service, that council may fill it?

Judge Thomas: No, sir; it is not parallel; because, in the case of the board of review, the law itself fixes the department; we provide it shall not be put into operation until a certain thing is done which puts the law into operation; the machinery is all provided; they have nothing to do but to set the law in operation, and when set in operation, it operates, not by force of ordinance, but by force of state law.

Mr. Silberberg: Will the gentleman yield to a question? Haven't you made an error —

Judge Thomas: I mean that the law shall provide that whenever the council desires to do that, they may call an election for a certain number that shall be provided for in this bill.

Mr. Silberberg: But you said in place of the head — didn't you mean in addition to the head?

Judge Thomas: No; I don't mean that.

Mr. Silberberg: What will be the effect of this law?

Judge Thomas: The effect of this law will be that in all cities in Ohio, until the council shall take action calling for an election of three members of the board, that there shall be a single director in charge of the department of public safety, but in such cities as an ordinance shall be passed calling for an election of three members of the board there shall be elected in place of the single director, a board of three members, and from that time on, the duties of the board of public safety shall be exercised in that city by that board.

Mr. Williams: In your opinion, do you think you could gauge the number of that board in accordance with the inhabitants of the city?

Judge Thomas: Yes, sir.

Mr. Williams: In other words, do you think it would be constitutional if you say the council may pass an ordinance which shall elect one man on the board for every five thousand, or every fifty thousand?

Judge Thomas: Yes, I think so; the same as you could provide for the councilmen.

Mr. Guerin: If your proposition of law is correct, why not make a provision, in order to give Cincinnati everything she wants, that an ordinance may be passed by the city council of any city in the state, increasing or diminishing the number of councilmen to be elected?

Judge Thomas: You can't do that.

Mr. Guerin: Why?

Judge Thomas: The law itself must fix the number, or it must be so fixed that the number will be based upon a scheme in the law itself, like councilmen, for instance.

Mr. Guerin: You don't understand me. I want the distinction. We have provided the council, we have provided there shall be one councilman or fifty councilmen, unless the council by ordinance shall increase the number of council?

Judge Thomas: No, I don't mean that; I mean simply that we provide in this bill that for the first 25,000 population there shall be nine councilmen. Now, it is not stated in the bill that whenever the council of any city shall pass an ordinance to that effect, they may fix so many additional councilmen; I think that would be unconstitutional.

Mr. Guerin: Why?

Judge Thomas: Because we have got to fix the instrumentality in the law itself.

Mr. Guerin: You want to put that in, perhaps, to give Cincinnati everything it wants. Why can you leave it to council to fix the number in the public service department? You are going to provide it can?

Judge Thomas: No; I am going to provide that council may, whenever it sees fit, put another branch of the law into operation; we provide the agency. We provide here two agencies, the department of public safety which performs the duty until such time as council may elect to have it performed or exercised by another agency, to-wit, a board composed of three.

Mr. Gear: If I understand you correctly, you mean that in the law the department of public safety shall be composed of one person; then

you also provide in the law that the council may provide by ordinance, for a board of three persons?

Judge Thomas: No.

Mr. Gear. You want a specific number?

Judge Thomas: Yes; I have to make a specific number, or it may be based on population. What I mean, is for the law itself, that the law itself must fix the agency, and the only question that will be left to council is merely the passing of an ordinance which will put into operation another department of the bill itself. There is no question, in my judgment, but what that is constitutional. What would be the effect? The effect of that would be, if we pass such a bill, that in every city, in Ohio, there would be a single director exercising the duties of the department of public service until such time as the council of any city, for instance, Cincinnati, shall pass an ordinance in which they may call an election, for the election of a board of three in that city; and when such election is called for the board of three, and such board is elected, the duties shall thereafter devolve upon and be exercised by the three. I think that is a law of uniform operation all over the state. Because why? Every city in Ohio may have it or not, as it pleases. Every city in Ohio is operated alike by that law, under the express decision of the Supreme Court in the 46th Ohio State, and also, of the Circuit Court of Cuyahoga county, or Cuyahoga district in the board of review case, and although it may give to some cities in Ohio, single heads of the department, and in others, a board, exercising the powers and duties of the public service department, it will still be of uniform operation; the agency may be one, or the other, whenever the law which puts the one or the other in operation has been passed.

Mr. Maag: Do you think it would be constitutional, if we say council may call an election for a board of not less than three or more than five?

Judge Thomas: No.

Mr. Ainsworth: Is it provided that the present council may do this?

Judge Thomas. Any council, any time in the future; whenever council wishes to do that, by the passage of an ordinance, they may call for an election.

Mr. Guerin: Mr. Chairman:— Answering Judge Thomas, in the first place I want to say that we have not, at the present time, the Supreme Court that we had a few years ago; so that I do not attach much importance to the decisions of a court whose entire rulings on the sub-

ject of the classification, and the operation of laws, passed for the government of municipalities of Ohio, have been set aside and reversed. The principle involved has been entirely upset and you cannot tell, at the present time, just exactly how this court will hold on similar propositions.

I want to say to you that ever since this question first came up, I have been as much interested as any man in the Ohio legislature; that I have spent much time with the governor and with his fellow workmen in the preparation of this code. The very proposition that Judge Thomas laid down, I asked Governor Nash about, at Put-in-Bay last summer; if we don't want boards, can't we have single directors? "No, sir; you can't have single directors. The law must create the office; if there is a single-head department, or a board, it must have uniform operation throughout the state." Now, I say to you, that if your proposition is correct, the two months spent in preparing House bill No. 5, has been wasted absolutely and unquestionably; for the people of this state will not tolerate a form of government that will thrust officers upon them, if by statute, they are not obliged to have them. I say the law must fix the agency. The law provides for the election of council, and graduates the number according to population. If your principle be right, council by ordinance, may either increase or decrease, if we give them the right, the number of councilmen in that council.

Judge Thomas: I don't mean to take that position, Mr. Guerin; I mean the law must fix the number.

Mr. Guerin: That is all right, we will fix the number. We would find out what Cincinnati wanted, and we will say, "You can have one hundred councilmen, if by ordinance your council shall so declare."

Judge Thomas: No, I don't mean that; I mean whenever any city in Ohio, there shall be nine councilmen, if there should be 15,000 additional population, there may be one more councilman, and so on. Now, the same thing might be true of the board of public service; if we can provide that the number of members of council may be graduated according to population, and increase with the increase in population then we can do the same thing with the board of public service.

Mr. Guerin: I said to Mr. Denman night before last, when we were talking this matter over — "Why don't you graduate the number of directors in that department on population? If you can do it in the case of council, you can in the heads of departments, and that is all right."

Mr. Denman: And I agreed with you.

Mr. Guerin: The proposition that you made and that the gentleman from Lucas made, was that we should have one director, and if thereafter in its wisdom, council should see fit to create an additional director, they might do it.

Judge Thomas: That is not the proposition.

Mr. Denman: The proposition was to provide for a department of public service; we erect that department; we say what shall be essential to it; I am not talking about whether one man or three or a dozen shall be there. We delegate to that department the power which it shall exercise; everybody agreed on that. Now, then, at the head of that department we say there shall be a director of public service, providing, however, that if at any time, in any city, the council shall by resolution declare that it deems it necessary that there be more than one man at the head of this department, and shall name the number deemed necessary, then at the next municipal election the mayor shall issue a proclamation for the number designated as being necessary.

Judge Thomas: I will say I don't quite agree with Mr. Denman that council may fix the number; I say the law must fix the number.

Mr. Guerin: The motion made by Mr. Denman was just exactly as he stated it, and I say to you that his proposition is untenable.

Judge Thomas: I think so.

Mr. Guerin: But I say Judge Thomas' proposition is equally untenable. My understanding from the people who drafted this code was, that if you want a board, there has to be a board in every city of the state; it must have uniform operation, and if you can grant the right to council, at its option, to have a board or a director, I say to you that you can create council a legislative and an administrative body of that corporation, and they can enact laws to create departments to carry out the powers given to them, and they can have one director or a board.

Mr. Cole: If the supreme court should declare this case from Cuyahoga constitutional, couldn't the provisions stated by Judge Thomas be enacted into law and wouldn't it be equally constitutional?

Mr. Guerin: Undoubtedly so.

Mr. Cole: Isn't that the law to-day?

Mr. Guerin: No, sir. I believe the supreme court will declare it unconstitutional; but I want to say further, that if we give the option to council to create officers, to fix the number of directors, if we are not going to have a law of uniform operation throughout the state, let's give the council the legislative and the administrative power, and then we will

say to council, "Create such other departments for carrying out the power that we have given you, as you think are necessary. Put in single heads, or boards, as a means, and when you have given that power to the board, or the head, and provided it shall be elected, your administrative function over that department ceases."

Judge Thomas: Will the gentleman yield to a question? — Isn't it a fact we have had for years something like this: That whenever in any city where there are parks, there shall be elected a board of park commissioners that shall have charge of the parks, and discharging the following duties, — naming them?

Mr. Guerin: Yes, sir.

Judge Thomas: Now, isn't it a fact that in cities all over Ohio there are boards of that kind that are not yet in existence, not even elected, until such time as some emergency puts the law into operation to bring the board into existence?

Mr. Guerin: Yes, sir.

Judge Thomas: Well, now, what is the difference between that that the provision in the law that whenever a certain agency puts it into operation, there shall be elected a board of public service?

Mr. Guerin: The difference in my opinion is this: We have had circuit courts before to-day which held that special legislation in the classification of cities of different classes and grades, was constitutional; the people of the state knew how the court held; they did not take the matter to the supreme court. We have a court now that looks at the constitution in a different way than ever before, and we are bound to follow out the opinion of the supreme court as to the law. I want to say to you that if you stand here pretending to represent the governor's code, you are on the wrong track, if I understand what the governor's code is, for it is insisted that we must have laws of uniform operation throughout the state.

Judge Thomas: Wouldn't that be uniform? Why not?

Mr. Guerin: No, sir; it would not, as I understand it, because every city in the state would not have the same offices.

Judge Thomas: But they might have.

Mr. Guerin: If they might have, let's carry that through all the other departments of city government, making a flexible form of government, leaving council to provide for the officers needed to carry it out; they can do that, if you confer upon them the administrative, as well as

the legislative functions of government. Why not do that? Why thrust upon Gallipolis, a small city, this expensive form of government, if, under any such rule of construction as you lay down, you can delegate to council the administrative functions of government, and allow them to create departments and create agencies for carrying out that power?

Mr. Williams: Don't you think if the legislature established the department and left it to council to establish the agency, that would be constitutional?

Mr. Guerin: No, sir; I don't think so, because you can't delegate that power. If, however, you delegate the administrative function to council, the council has a right to create the agency to carry out that power that is conferred upon it.

Mr. Painter: Mr. Chairman and Gentlemen: Of course the main question in this has been the discussion of the constitutionality of these laws, and what the constitution of Ohio allowed. The code-builders, whether it be Mr. Ellis, or Mr. Guerin, or the board of commerce, or anyone else who has planned a form of government for the legislature to adopt for the municipalities, have acted along the line of getting a constitutional form, and the very first obstacle they have encountered has been section 26, article 2, of the constitution of Ohio, the first line or so which reads as follows: "All laws of a general nature shall have uniform operation throughout the state." Now, gentlemen of the committee, all the arguments that have been produced here this morning, have hinged, and very properly so, upon this line and a half of section 26, article 2, of the constitution. Now, I take it that Judge Thomas, in his argument, would have been all right — his premise may have been all right and his conclusion all right, if the word "operation" had been the word "application." In a conversation with Mr. Ellis upon that subject, I took the position Judge Thomas has taken, that when the legislature had enacted a law that applied to every municipality in the state of Ohio, that is, with the population of a city, then that law complied with the terms of the constitution; but that when it applied to every city in Ohio, it had to go one step further to make it comply with the terms of the constitution, and that is, that it must operate by the same means and in exactly the same manner or same way in each city in the state of Ohio. It would be very easy for the legislature to enact a law that would apply to every city in the state of Ohio, but you must go one step further: It must operate exactly the same; if the city of Cincinnati has a board of directors, or a board of public service with

five members, the city of Bowling Green must have a board of five members also, in order to make that law constitutional.

Mr. Williams: Don't you think that if the duties of the director of public service, or whatever you may call him, are fixed, that then we have a law of a general nature and uniform operation, and that the question of whether or not that law is put into effect by one man or ten men, would not make any difference?

Mr. Painter: It does make a difference.

Mr. Denman: Then why will it not be absolutely necessary that we provide for a board of public service in every city of this state to hire exactly the same number of men?

Mr. Painter: We don't hire men; we provide for one officer, a director of public works, say. He hires the men.

Mr. Denman: Why must he not hire the same number, then, if this must be of uniform operation?

Mr. Painter: Oh, no. To construe this section, the first thing to do is to hunt up what the Supreme Court said at that time was the intention of the men who drew that section; and when we find out what their intention was, we know what this section of the constitution means, that "All laws of a general nature must have uniform operation throughout the state." In the case in the 15th Ohio State, 605, Judge Scott says: "It is urged that the law in question is in conflict with the 26th section of the 2d article of the constitution which provides that 'all laws of a general nature shall have uniform operation throughout the state.' Under the former constitution, laws having a general subject-matter and therefore, of a general nature, were frequently limited expressly in their operation to one or more counties to the exclusion of other portions of the state. As a consequence, on the same subject, there might be one law for Hamilton county, another for Franklin and still a third for Ashtabula. This naturally led to improvident legislation, enacted by the votes of legislators who were indifferent in the premises, because their own immediate constituents were not to be affected by it. To arrest, and for the future, prevent this evil, the provision in question was inserted in the present constitution."

We must shape our opinion so that they coincide with the opinion of the Supreme Court, and if there ever was a time in the history of legislation in Ohio when we were especially concerned as to that, it is this time, because as Mr. Guerin says, the Supreme Court has rendered a decision that upsets and knocks out the law that has been laid down by

the Supreme Courts of Ohio for the last fifty years, and their action and their decisions in the future they will certainly make consistent with the decision they have rendered in the Toledo case. Now, if this decision I have read to you here is true, if it tends to show that the framers of the constitution in 1851 meant by that section, and if what the Nash code builders say is true, then the theory of the gentleman from Lucas cannot be constitutional. In creating a department of public service, if we do, we must do it in such a manner as will make it constitutional, and in order to make it constitutional, it must be built in such a manner that if Cincinnati has five members of that board, Bowling Green must also have five members, or the law is unconstitutional.

Judge Thomas: If we could arrange it so that Bowling Green could have one director, and Cincinnati five, if they wanted it so, you would be in favor of that? .

Mr. Painter: Certainly.

Mr. Denman: It may be that you do not understand exactly my proposition; it is this: That all the machinery of the department is to be erected; all the duties to be performed are to be specifically prescribed; that there shall be a head, or a board, provided, however, that it shall be submitted to the electors of the town; provided, also, that on the petition of a certain number of citizens of the town, to the council, it may call an election for three, or for two additional members to be at the head of that department; that is our law, as we would enact it here; it is not left to council; these things are provided.

Mr. Guerin: Before the gentleman from Wood replies, let me ask another question that will go with it. I will ask you whether or not, in your opinion, if that same power of local option, which is a police power, were put in a municipal head, under the general powers of the city council, if that would not simply be a carrying out of a law, rather than the creation of an office for the government of the municipality?

Mr. Painter: Yes.

Mr. Guerin: You are not creating an office, but you are carrying out the law for the government of a municipality?

Mr. Painter: I say, Mr. Chairman, if the word "application" were in the constitution instead of the word "operation," I think perhaps the gentlemen would be right in their conclusions upon that subject.

Mr. Price: This all hinges around classification; you have not got away from classification yet. I have been figuring out the operation, from the provisions of the Guerin code, in reference to the council. In

a city of five thousand, there would be seven elected; in cities of from 40,000 to 65,000, there would be seven elected and three at large, and from 65,000 to 80,000 there would be eight elected and three generally; going on to 125,000, you would have fifteen, and after that, further provision is made; in other words, you have two elements of classification in that arrangement. It is generally understood that that would not be constitutional, but I am not prepared to say it is not; on the other hand, I believe it is. I think this is true: That after you have differentiated, as I have said before, the legislative from the executive function, made a mayor and a council, only, that we can confer broad enough power upon the council to work out every municipal function that this bill or any other bill proposes to confer upon them. A law of uniform operation does not mean that you shall have just the same agents to carry out these things, and the agent may be designated in such terms that he will be an officer; there is no question about that.

Mr. Painter: Will you yield to a question? What constitutes an office, Mr. Price?

Mr. Price: Usually considered, the characteristics of an office are duration and service.

Mr. Painter: I think we might as well clear away the rubbish and get at the question clearly. I don't believe there can be an office constituted except by act of legislature; anything else created in connection with this municipal code, would not be an office.

Mr. Price: If we create a mayor and a council, provide for a mayor and a council, or a treasurer and a clerk, and provide a solicitor, then to make that law operate uniformly, they must be existing in all corporations alike; but you can provide that the council of any municipality may call into being agents; if you like, either by ordinance, or election, as you please, and that will be constitutional, but it is not part of the organization of the municipality; it is creating the means whereby to carry out the functions of the municipality.

The municipality is organized when we separate the legislative from the administrative function. The municipality is organized if you make a legislative body, and provide for a mayor, the executive officer; that is the simplest form of organization that I can think of; we can make it more complex by providing for a treasurer, by providing for a clerk; you can make it more complex still by providing for a solicitor; you can make it more complex still by providing for a board of public service you can make it more complex still by providing for a board of public

safety; you can make it more complex still by going down the line until there is no end, by providing one officer after another, but you don't have to do that; you can stop with the mayor and the council, conferring the broad power upon council to create such officers and agents as it desires; it is not organizing the municipality when the council does it, it is creating the officers and agents of the municipality.

Mr. Cole: Mr. Chairman:— I am not going to deliver any constitutional argument; I don't know very much about this constitution; I never did, and I never expect to, and I know less about it the more I hear, it seems to me.

The Supreme Court, as I understand it, has never said what is, or what shall constitute the maximum amount of organization, or the minimum amount of organization that we can prescribe for cities and villages; but when we look at our national government and our state government, they have given us an example; they prescribe the officials and the different departments of government to exercise the three functions of government, the executive, the legislative and the judicial. Our state constitution prescribes the various officers to exercise these three functions of government.

Now, I believe with those two examples, we can go on with perfect safety, assured that we are resting within the limits of the constitution, when we provide officers for the performance of the three functions of government in our municipalities.

Now, in this section 26, as it was discussed by Mr. Painter here, it is very evident that the officers may exercise these three functions of government, and that they must be uniform throughout the State. The proposition suggested by Judge Thomas, it seems to me, rests entirely upon the case that is in the Supreme Court today, and it is very questionable as to what the decision of the Supreme Court will be. I remember last winter we passed a bill here providing some sort of a park commission in the city of Cleveland; that law was to be operative at the discretion of the auditor of Cuyahoga county. Now, the question is whether we can pass a law and make it go into effect or into operation at the discretion of anyone outside of a legislative body. It occurs to me that that is very simple and plain under the latter part of Section 26, Article 2, of the state constitution, where it says: "Nor shall any act except such as relate to public schools, be passed to take effect upon the approval of any other authority than the general assembly, except as otherwise provided in the constitution."

Mr. Denman: Are you aware, Mr. Cole, that that has been construed in this way: That that means that you cannot say that this act, for instance, shall become a law upon the discretion of the auditor or anything of that kind. We must say it shall take effect and be in force from and upon its passage, or upon some other date.

Mr. Cole: I insist upon my former contention. As has been said by the gentleman from Erie, the supreme court does not seem to be controlled by the decisions rendered by former courts.

Mr. Willis: Until I heard the discussions of last evening and this morning, I have had some very grave doubts about this proposition; but the arguments that have been made by Mr. Denman and Mr. Thomas, and Mr. Price have convinced me that Mr. Guerin and Mr. Painter are absolutely and unquestionably correct in their decision upon this constitutional question. Mr. Denman says that the legislature of Ohio can do one thing; Judge Thomas says that the legislature of Ohio cannot do that, but they can do another thing, and Mr. Price says that the legislature of Ohio can do those things and a whole lot more, the Lord and Mr. Price only know what they are. I say to you gentlemen, that it seems to me that the determination of this question ought to be decided very largely by the considerations under which we are here. I will ask the members of this committee, why is this legislature called in special session? Are we called here to explain theories? Are we called here to expound new ideas of government? Are we not called here because the laws under which the municipalities of this state have been operating, have been declared unconstitutional? If a man's house were burning down, and the fire engines were there, would that man stop to argue that the hose should be of such and such a diameter, or that the horses should be of such and such a color? I think not. If he would try to do that, he would never be able to get the fire put out. I say to you, gentlemen, that in my humble opinion, we make a very grave mistake if we stop to incorporate into the bill all these ideas that have been so ably expounded by these gentlemen this morning. They say there cannot be any doubt about it, but I say to you that there is doubt about it. I asked that same question of Mr. Hogsett, who is as good a lawyer as any here, and he declared it was unconstitutional. I put it to Mr. Randall, and he refused to commit himself; I asked him if we could create a board of public service in that manner, and he refused to answer the question; I asked it of Judge King, and he also refused to commit himself. I asked Mr. Garfield, and he said it was unconstitutional. The gentlemen here say that these opinions come from men who want to see the code go

through. Did Mr. Garfield want to see the Nash code go through? Did Mr. Hogsett want to see the Nash code go through? Didn't he stand before this committee for an hour or two as to the flaws and all that in the Nash code? I say that there is nothing at all in the contention that because a man opposes this he has some ulterior purpose. The very fact that we have had such a discussion on this question shows that it is the part of wisdom not to put anything of that kind into the code. We want a code that will stand the test of constitutionality first, last and all the time. I am opposed to this motion.

Mr. Denman: It is useless for me to express my surprise at the tangle into which these clear-headed gentlemen have become involved, but I want to ask Mr. Ellis, or any other lawyer here, whether or not the motion I put, might not stand in this way: That is, if the proviso might not be declared unconstitutional and the provision for the single director stand. Possibly Mr. Ellis has not heard the motion, and I will explain it; it is, that at the head of the department of public service there shall be a director; provided, however that if at any time, the council of any city shall, by resolution, declare that it deems it necessary that there be one or more, and shall name the number of directors, at the head of that department, then at the next municipal election, the mayor shall issue his proclamation for that number. Now, the question is, whether or not that proviso standing alone and by itself, might not be declared unconstitutional, and still, they would have the one director. I contend that one part of a law may be declared unconstitutional, and still the rest of the law stand, and that will not all be declared unconstitutional unless the evident intent of the legislature was that the part not in question would not have been enacted, were it not for the purpose of securing and obtaining the part in question. That stands in many decisions and is clearly the law. In other words, if a law were passed in this way, somebody might contest the proviso and if it were declared unconstitutional, yet, the rest of the law would stand.

Mr. Wade Ellis is accorded the privilege of the floor and replied to Mr. Denman as follows:

Mr. Ellis: I had not intended to take any part in this discussion, but I cannot refuse to answer Mr. Denman's question in the best way I can.

I think there is no doubt about the general principle that one part of a law, or an act, may be declared to be unconstitutional and the balance of it may remain and be operative. The question always is, would the legislature have passed the part that is to remain, if it had not incorporated that

part stricken out, because unconstitutional? In other words, if the proviso, as you put it, in a bill is so much a part of the bill as to disclose the general purpose of the legislature in the enactment of the entirety, to provide a particular plan, elective, say, in part, so that there would be one director of public service in a small city, and a different number in the larger cities, if so desired by council; if that should become so much a part of the general plan as to disclose the purpose of the legislature in this seeking to accommodate the municipalities, so that it could not be separated from it, then, if it were unconstitutional to make this proviso, I think the chances would be that the whole law would fall. If it were possible to separate it, and if the intention of the legislature could be discovered, then the proviso might fall and the balance of the bill stand.

Mr. Denman: Of course, I think we all know we would enact that, if it could stand; I think that is the position of every man on this committee.

Mr. Guerin: I want to rise to a question of personal privilege. I made a statement in answer to a question, that a form of government with a mayor and a judiciary and a council, with the administrative and legislative power in council, would be the best form of government. I want to say that it is my opinion that the restrictions of the constitution on the legislature is a very good thing for the people of the state at large, and that statement of mine, I want corrected, — with proper restrictions upon the exercise of power by councils.

Mr. Williams: I would like to ask Mr. Ellis a question: If, in taking up the question of the administrative power of government, we should say it shall be vested in a director of public service, provided that for the first 100,000 inhabitants in any city, in addition to the original 5,000, there should be an additional member for every additional 50,000, do you think that would be constitutional? In other words, it would make, in a city of less than 105,000, one director of public service; up to 150,000, two directors, and so on.

Mr. Ellis: There is a very great difference, of course, between the legislature, which is commanded by the constitution to provide for the organization of cities and villages, itself determining how many directors there shall be in a city of a certain size, and the other proposition, that that question shall be left to council. In my judgment, the legislature cannot delegate to council the determination of the number in a particular board, as that duty has been imposed by the constitution upon the legislature. The legislature cannot permit or authorize council to create an office. An officer is one to whom is delegated some portion of the

sovereign power of the state. An office is an agency through which is exercised some of the sovereign power of the state. Offices must be created and officers must be provided for by the legislature, which represents the sovereign power of the state. There is not any doubt but that the legislature can impose, or repose the power in council and permit council to exercise it, through any agency which council may determine; that is to say, the legislature can give all powers to the council, and let council hire as many men as it chooses; but if it is designed to give to some board or officer powers independent of council, such as the power conferred here upon the board of public service, then the legislature cannot empower council to create a body to be independent of council, and confer upon that body power which it rests in the legislature to confer. It is a distinction between the creation of a department under the board of public service, and the creation of an office by council, or the board of public service, or any other agency. The legislature has so much power to confer. Now, it must select the agency in the municipality upon which to confer that power, this providing the organization for the administrative functions of local government. Having once selected the agency, having designated the recipient of this power, that recipient must perform its duties through agencies responsible to it. As, the board of public service may create departments, hire engineers; the police board may have as many officers upon the police force as it chooses, all of them responsible to the board, which is designated by the legislature as the recipient of the power; but the legislature, while it may give all the power to one board and permit that board to carry out the functions, through directors and sub-agencies responsible to it — it is an entirely different proposition for the legislature, which is itself authorized and required to provide this organization, to permit council to determine upon the creation of offices, which shall be independent of council. There is no question about that, I think, but that, while council cannot be authorized, in my judgment — very many men differ from me on this proposition, therefore, I do not insist upon it strenuously, only to say it is my judgment — that while it is true that council cannot be authorized by the legislature to create offices independent of council, it is true that the legislature in determining the number of members that there shall be upon the board of public service, provide that in every city there shall be a director of public service, provided that for the first hundred thousand inhabitants, in addition to the number requisite to make a city, there shall be an additional director of public service; in other words, that you can

do precisely with the board of public service what you have done, or what you propose to do, with respect to council. That is the legislature determining the board and the number of officers; it is not delegated to council. The legislature organizes each city; the act applies uniformly throughout the state wherever the hundred thousand inhabitants exist, and there is no question in my mind but that what that would be constitutional. There is this difference between the board of public service, which is, and ought to be an administrative body largely, separate wholly from the legislative body, or council; council is a peculiarly representative body, the number of members of council necessarily depends largely upon the number of people they represent. The very first, fundamental principle in the organization of council, or the erection of a council is the basis of representation; therefore, it must be that there is a distinction between determining by the legislature the number of members of council, by fixing the basis of representation at the number of inhabitants, and fixing the number of members of the board of public service.

In my judgement, however, that is not an essential difference, and there is not any doubt but that this legislature may provide that in every city there shall be a director of public service with certain duties to perform, and that, dependent upon the number of inhabitants, there shall be an increasing number of directors of public service, who shall perform the same duties, and that is a creation, upon the part of the legislature, of the office; just as it has done with respect to council, and it escapes the danger of delegating that power to council, which in my judgment would be, to say the least, unsafe.

The Chairman: The question is on the motion of Mr. Denman. The secretary will call the roll.

Judge Thomas: Before the roll is called on that proposition, I wish to say that I do not agree with Mr. Denman; therefore I shall be opposed to the motion as he made it.

The Chairman: The chair wishes to explain before voting. I will say that while I believe the proposition of Judge Thomas to be safe and sound, yet I think the only safe thing to do is to take the side that is absolutely safe and constitutional therefore, I shall have to vote "No" on the proposition.

Mr. Hypes: I desire to explain my vote, Mr. Chairman. I am in favor of reaching the ends that Mr. Denman seeks to reach through his motion. I wish to say right here that I feel benefited by all the arguments that have been advanced, and by the very able discussion of this

question, and I believe that we have received a hint as to how we may reach this desired result, through a basis of population, and in the hope that this matter can be adjusted in another and possibly in a safer way, and in a more constitutional way, I shall vote "No."

The secretary called the roll, resulting as follows:

Ayes — Metzger, Stage, Denman, Bracken.

Nays — Comings, Painter, Guerin, Price, Cole, Williams, Thomas, Chapman, Allen, Silberberg, Worthington, Hypes, Willis, Gear, Ainsworth, Maag, Huffman, Brumbaugh.

Mr. Williams: I think this question is perhaps the most important one we shall have to take up, and I think the information Mr. Ellis has given us, has shown us a way out of the difficulty, and I make this amendment to the original motion:

That the administrative power shall be vested in a director of public service, consisting of one member; provided, that in the first 100,000 inhabitants in any city, in addition to the original 5,000, there shall be one additional member; and that for every additional 50,000 inhabitants there shall be an additional member, provided that the number shall never exceed five.

Mr. Silberberg: I second Mr. Williams' motion.

Mr. Price: Mr. Chairman, I wish to say that I don't think there is any radical difference between my opinion and the opinion of the gentleman from Hamilton county, Honorable Wade Ellis, but I wish to ask him a question. As I understood him to say, council cannot create any office independent of itself — independent of council; now, it is a matter for explanation, what that sentence means?

Mr. Ellis: I mean this, Mr. Price: That the legislature gives to the municipalities their powers; the municipalities of the state are the creatures of the legislature; the legislature can give them such power as it chooses; it can deny them any; they are the creatures of the legislature. Now, when the constitution requires that the legislature shall provide organization for the municipalities, it means, in my judgment, that the legislature, in conferring power upon the municipalities, must designate the recipient or recipients of those powers, and when it has designated the recipient of any particular power, that agency designated by the legislature, can carry out those powers through sub-agencies responsible to it. But the legislature cannot authorize the municipality, or any board or officer in the municipality, to create another board or any other officer,

which shall be the recipient of power delegated by the legislature, and to be exercised independently of the board or officer which creates it.

Mr. Price: I agree with you on that proposition. But coming back: Suppose the council of a municipality has charge of the streets, and we will say that it can appoint a street commissioner, as provided by ordinance, or that the street commissioner shall be elected —

Mr. Williams: May I interrupt just a moment. I have perhaps made my motion a little stronger than I intended; I said the administrative power should be vested in one man; I would like to change that and say that in every city there shall be a department of public service, which shall consist of one man — then going on with the rest of the motion, as given.

Mr. Guerin: As I said awhile ago, and I don't think it will be disputed, we have a right to delegate to council the administrative, as well as the legislative functions of city government. If we require of them the management of the improvements of the city, then they can create such departments as they desire to carry out that administrative work, and employ such superintendents and do such things as in House Bill No. 5, are delegated to the board of public service. I am not objecting to the member from Hamilton having a board of public service, if he wants it; he makes the statement that the smaller cities get what they want, let the larger cities do the same. That is the principle upon which the legislature has been run for a great many years, — "Let my city have what it wants, and I will vote for whatever you want." I don't believe in the board system; it is not because I don't want Hamilton county, or Cincinnati, rather, to have a board, that I oppose this measure, but because I think the people in this state will get better government under the single heads of departments, and in the largest city in this state you will find republicans and democrats alike, demanding this very thing. You go there and meet the business men of that city, irrespective of party, as I have done, and you will not find one in a hundred who favors the board plan. Even the Cleveland "Leader," one of the great daily papers of Ohio, the leading republican paper of that city, has demanded time and again, editorially, what is known as the federal plan. Whether you make the head of that department elective, or whether you make him appointive, I say to you if you make him responsible, and concentrate the responsibility in a mayor, who shall see that the heads of departments perform their duties in accordance to law, you will have no divided responsibility, no shirking of duty, but you will have good government. I say to you I hope that amendment will not carry, not because it affects my city, but because I don't believe it is

what the people of this state demand and want, and I don't believe that it will furnish as good a government to the large cities of the state as the single heads of departments will. Your stockholders in the big corporations meet and they elect a board of directors. The people of your cities meet and they elect your city councils. In both instances, the administrative affairs of the corporation are vested in a board of directors, and they employ such superintendents and such officers, if you please, as they find necessary to carry out the work in the administrative department of a corporation. That is so in every corporation in the country and in the world, for that matter; it is so in the national government of the United States of America. It is so in the state of Ohio, to a large extent, but not in the cities. I say, gentlemen, that it is the principle we are after. I don't care whether the delegation from Hamilton county wants that, or not; I would like to give it to them, if I could, and still live up to my opinion of what is best for the people of this state in general and for the largest number in particular. I say to you that the people do not want board rule; they have had experience with board rule in San Francisco, in New York, in Philadelphia and in Boston, — in the largest cities of this country, and that is the result. I say to you we want no waterworks board, we want no public service board, we want competent men on a salary, acting under rules and regulations as the administrative department of the city government; therefore, I am opposed to this amendmen, and I want to say, gentlemen, that if you enact any such thing as that for the benefit of the city, one particular city in the state, or two, you will not be doing your duty as members of this legislature, and I sincerely hope this amendment will not prevail.

Mr. Painter: I want to ask Mr. Ellis a question. Would not the proposition, or the motion of the gentleman from Hamilton, if acted upon, drag us back into classification again?

Mr. Ellis: It would unquestionably provide a differing number of directors in the larger cities and in the smaller cities; there is not any question about that, and it would do exactly what you are proposing to do for council. I think it is always better to avoid that. I believe, in my judgment, the board plan is the better plan for our cities; but if that cannot be procured, while it is true that this would do exactly with respect to the board of public service what it has done for council, yet, it would not, in my opinion, bring us back to classification.

Mr. Painter: That is the point I want to get at, to act upon this principle. If we adopt the federal plan, if we adopt the board plan, if we adopt the federal plan, but have single heads of departments elected by the

people,—there are three propositions, the constitutionality of either of which I do not believe is seriously questioned by anyone in the state of Ohio; but the proposition of the gentleman from Hamilton will bring us back into something that, as Mr. Ellis intimates, is not quite as safe as the other propositions.

Mr. Chapman: Mr. Chairman: I believe that the proposition made by the gentleman from Hamilton is constitutional, but I do not believe that it is expedient. I agree heartily with everything the gentleman from Erie has said. I think there is no department in any city of this state which is too large for one man to fill; there is no corporation nor organization in this country which is too large to have one head, one man at the helm. I can see no other reason for providing for a large board—and that is what it means—than to provide offices for certain men. I am certainly opposed to the proposition.

Mr. Williams: I don't want to say many words upon the subject of the board plan, or upon the federal plan; I suppose we all have our own ideas upon those subjects; but I cannot understand the gentleman from Erie when he says we are not to give the people what they want. Nor can I understand how he should know so well what the people in Hamilton county, or what the people in Cincinnati, want. It seems to me if I want to inquire what the people in the city of Sandusky wanted, it seems to me I would be a little courteous, and I would ask the member from Erie county. When the delegation from Hamilton county appears in this committee and tells it what the people of that county want, it seems to me that should be sufficient ground for this committee to believe that the people of Cincinnati want the board plan of government.

Mr. Stage: Is that the way you passed the park board bill—by asking the Cleveland delegation what those people wanted?

Mr. Williams: I simply want to emphasize what has been said in favor of the board plan.

Mr. Worthington: Mr. Chairman and Gentlemen: My views on this subject have been more ably and conclusively presented to this committee by the gentlemen from Erie than I can hope to present them. All the arguments that have been produced by different speakers before this committee, it seems to me, have been in favor of the single heads of departments, or the centralized responsibility. We are not here, as I look at it, to legislate for any one city in the state of Ohio; we are here to pass a code for the cities of the state, and I believe when we provide for one head to each department, we shall come nearer to doing what the people

want, and what they have asked for, than by providing for a large board; therefore, I shall vote all the way through for what I think the people of the state of Ohio want, regardless of politics, I shall vote all the way through for the single heads of departments, and for the centralized responsibility.

Mr. Silberberg: Will the gentleman yield to a question? Don't you consider the people of Cincinnati, people of the state of Ohio?

Mr. Chapman: Yes; just one part of it; they are the people of one of the eighty-eight counties of the state; they are not all of Ohio. We should look after Hamilton county the same as any other county, and I claim that one head of a department will look after the affairs of Cincinnati better than a board of five, and that is the reason I shall not vote for that proposition. I believe we can get a greater measure of home rule by the single heads of departments, if elected by the people, and that is what we want, and that is the reason I would so strongly favor and support a measure of that kind.

Mr. Metzger: The theme of one of the speeches made here this morning was, that the legislature had been called here for an especial and specific purpose, and that we would take no chances upon anything that might be doubtful as to constitutionality, or that might involve a question as to its being sustained as constitutional. Now, I want to ask some one in this room, I do not care whom, whether as a matter of fact, it is absolutely a settled question that this organization, or, rather, the provision for a board of public service, upon a graduated scale of population, is an absolutely settled question?

("No, no.")

Mr. Price: What I may do here today and what I may do or be willing to do after the bills get back from the conference committee, may be different. In other words, I do not intend to make an absolute decision, because there are many ways that this thing can be shaped up. There is not any question but that if the provisions of the Nash code, in reference to the way members of council are determined, are constitutional, then to accept the proposition of the gentleman from Hamilton as constitutional, is a settled question. It is the same thing; there can't be any doubt about that.

A while ago, Mr. Ellis was answering questions, and now I have this to say for myself, without calling the gentleman back. I take no exception to what Mr. Ellis has said, that the council cannot create an office independent of itself; I think that it can create the office of street

commissioner and others, but can repeal the ordinance the next night, and the street commissioner may become simply the agent of the municipality, looking after the streets.

Mr. Cole: In your judgment, can one department of the government create a co-ordinate department?

Mr. Price: I will answer that, no. When we created the office of mine inspector, or police and fire inspector, we were not creating co-ordinate branches with the attorney general's office; and when the council brings into life, or provides for the election of agents of the municipality, they are not creating offices co-ordinate with the council.

Mr. Cole: Don't you think the administrative office of government should be co-ordinate with the legislative and judicial?

Mr. Price: It is co-ordinate in this: We provide for a police court; that we all agreed to. We provide a council, we provide a mayor, and the mayor is the executive officer that is co-ordinate with the council and the other officers.

Judge Thomas: I don't want to make a speech, but I want to say that on the general proposition, I am in favor of one head of a department, and that that head should be elective, as far as possible. But, now, gentlemen, it is only about five minutes to our usual time for recessing, and it seems to me, before we take this vote, we ought to have a little further time on this matter. I therefore move we do now adjourn, or recess.

Mr. Painter: I second the motion.

The motion was put to vote and declared lost. Ayes, 9; nays, 13.

Mr. Guerin moved the previous question. The motion was seconded and carried.

The Chairman: The question is now on the amendment of the gentleman from Hamilton. The secretary will call the roll.

Mr. Denman: This is, I think, the first time I have had to explain my vote. I agree with the plan, as far as it is concerned, but I do not agree with the apportionment, and that is why I wanted to have the matter deferred. I shall vote "No," simply because I do not agree with the apportionment included in the amendment as it has been offered here.

On roll-call the vote resulted as follows:

Ayes — Williams, Allen, Silberberg, Hypes, Willis.

Nays — Comings, Painter, Guerin, Price, Cole, Metzger, Thomas, Chapman, Worthington, Denman, Gear, Stage, Bracken, Ainsworth, Maag, Huffman, Brumbaugh.

The Chairman: The question is on the original motion, that in every city there shall be a director of public service who shall be elected for two years. A roll-call is demanded, and the secretary will call the roll.

Mr. Guerin: Mr. Chairman, I rise to explain my vote. I shall vote "No," for this reason: That I believe the director of public service should be appointed by the mayor; I believe by that method we would get better service; but if we cannot have him appointed by the mayor, I want him elected. I shall vote "No."

The roll-call resulted as follows:

Ayes — Comings, Painter, Price, Cole, Metzger, Thomas, Chapman, Allen, Worthington, Denman, Hypes, Willis, Gear, Bracken, Ainsworth, Maag, Huffman, Brumbaugh.

Nays — Guerin, Williams, Silberberg, Stage.

On motion, the committee recessed to 2:00 o'clock P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

WEDNESDAY, SEPTEMBER 17, 1902.

9:30 O'CLOCK, A. M.

Pursuant to adjournment, the Committee for the consideration of Municipal Codes met in the Finance Committee room, the following members responding to roll-call:

Comings,	Denman,
Painter,	Hypes,
Guerin,	Willis,
Cole,	Stage,
Williams,	Bracken,
Metzger,	Ainsworth,
Thomas,	Maag,
Chapman,	Huffman,
Allen,	Brumbaugh,
Silberberg,	Sharp.
Worthington,	

It was moved by Mr. Worthington, seconded by Mr. Hypes, that night session be held to-night and Friday night. Motion lost.

On motion, the Committee proceeded to the consideration of the powers of municipalities.

Mr. Thomas moved to amend section 7, by striking out the colon at the end of line 69 and adding the following: "and council may provide by ordinance or resolution for the exercise and enforcement of the same." Motion carried.

Mr. Willis moved to amend section 7, by striking out the period after the word "same" in line 68 and inserting the following: "and make any and all rules and regulations, by ordinance or resolution, that may be required to carry out fully all the provisions of any conveyance, deed or will, in relation to any gift or bequest."

Motion carried. When so amended, the section reads as follows:

Section 7. Every city and village shall be a body politic and corporate, which shall have perpetual succession, may use a common seal,

sue and be sued, and acquire property by purchase, gift, devise or appropriation for any municipal purpose herein authorized, and hold, manage and control the same and make any and all rules and regulations, by ordinance or resolution, that may be required to carry out fully all the provisions of any conveyance, deed or will, in relation to any gift or bequest. All municipal corporations shall have the following general powers and council may provide by ordinance or resolution for the exercise and enforcement of the same:"

On motion, sub-section 1 is adopted without amendment.

Sub-section 2. Mr. Stage moved to amend, by inserting after the word "billiard" in line 73, the word "pool." Amendment carried.

Mr. Cole moved to amend, by inserting in line 73, after the word "pool" the words "and ping pong."

When so amended, the section reads as follows:

Sub-section 2. "To regulate billiard, pool and ping pong tables, nine or ten pin alleys or tables, and shooting and ball alleys; and to authorize the destruction of instruments or devices used for the purpose of gambling."

Sub-section 3: Mr. Guerin moved that the words 'to determine what shall be a nuisance and' in line 77, be stricken out. Motion carried.

When so amended, the section reads as follows:

Sub-section 3. "To prevent injury or annoyance from anything dangerous, offensive or unwholesome; to cause any nuisance to be abated, and to regulate and compel the consumption of smoke, and prevent injury and annoyance from the same."

Sub-section 4: On motion, is adopted without amendment.

Sub-section 5: Mr. Thomas moved to amend sub-section 5, by striking out all of line 83 after the figure "5." Strike out all of lines 84, and 85 and insert the following: "To regulate or prohibit the selling, furnishing and giving away of intoxicating liquors as a beverage, as is provided for in an act entitled "An act to amend section 4364-20 of the Revised Statutes of Ohio, and to supplement said section by enacting supplementary sections 4364-20a, 4364-20b, 4364-20c, 4364-20d, 4364-20e, 4364-20f, 4364-20g, 4364-20h, and 4364-20i," passed April 31 1902, (95 O. L., 87.)" Amendment carried.

Sub-section 6: On motion, is adopted without amendment.

Sub-section 7: On motion, is adopted without amendment.

Subsection 8: Mr. Guerin moved to strike out the words in line 92. "imported into the corporation for that purpose."

Amendment carried.

With this amendment the section reads as follows:

Sub-section 8. "To regulate auctioneering; and to regulate, license or prohibit the sale at auction of goods, wares and merchandise, or of live domestic animals at public auction in the streets or other public places within the corporation."

Sub-section 9: On motion by Mr. Bracken the word "interurban" is inserted in line 102, after the word "steam."

On motion of Mr. Chapman the word "traction" is inserted in line 102, after the word "interurban."

When so amended, that portion of the section reads: "and to regulate the speed of locomotives, steam, interurban, traction and street railway cars within the corporation."

Sub-section 10: On motion of Mr. Hypes, the word "chickens" is inserted after the word "geese" in line 104, and the words "fowls and" are inserted after the word "other" in line 104.

On motion of Mr. Maag, after the word "therefrom" in line 108, 211 of lines 108 and 109 are stricken out.

When so amended, the section reads as follows:

Sub-section 10. "To regulate, restrain and prohibit the running at large, within the corporation, of cattle, horses, swine, sheep, goats, geese and other fowls and animals, and to impound and hold same, and on notice to the owners, to authorize the sale of the same for the penalty imposed by any ordinance, and the cost and expenses of the proceedings; and to regulate and prohibit the running at large of dogs, and to provide against injury and annoyance therefrom."

Sub-section 11: On motion of Mr. Hypes, the word "and" is stricken out of line 110, and the words "and sale" are inserted after the word "keeping" in line 110.

When so amended, the section reads as follows:

Sub-section 11. "To regulate the transportation, keeping and sale of gunpowder and other explosive or dangerous combustibles and to provide or license magazines for the same."

Sub-section 12: On motion, is adopted without amendment.

Sub-section 13: On motion of Mr. Silberberg, sub-section 13 is referred to a committee of three, appointed by the chair.

Messrs. Stage, Thomas and Williams were appointed.

Sub-section 14: On motion is adopted without amendment.

Sub-section 15: On motion, subsection 15 is amended by adding, after the word "plants" in line 135, the following: "and to establish, maintain and operate natural gas plants and to furnish the municipality and the inhabitants thereof with natural gas for heating, lighting and power purposes, and to acquire by purchase, lease or otherwise the necessary lands for such purposes, within and without the municipality."

With this amendment, the section is adopted.

Sub-section 16: On motion is adopted without amendment.

Sub-section 17. Mr. Stage moved to amend by striking out the words "the same" and inserting in line 140, the following: "public and private cemeteries and crematories." Amendment carried.

When so amended the section reads:

Sub-section 17. "To provide public cemeteries and crematories for the burial or incineration of the dead and to regulate public and private cemeteries and crematories."

Sub-section 18: Mr. Hypes moved to amend by inserting the word "grade" after the word "plat" in line 141. Amendment carried.

Mr. Guerin moved to amend by inserting in lines 145, 146 and 147, before each of the word "landings, wharves, docks, piers—basins," the word "public." Amendment carried.

Mr. Hypes moved to amend by inserting before the word "and" in line 143, the word "places." Amendment carried.

When so amended the section reads as follows:

Sub-section 18. "To lay off, establish, plat, grade, open, widen, narrow, straighten, extend, improve, keep in order and repair, light, clean and sprinkle streets, alleys, public grounds, places and buildings, wharves, landings, docks, bridges, viaducts and market places within the corporation, including any portion of any turnpike or plank road therein, surrendered to or condemned by the corporation; to regulate public landings, public wharves, public docks, public piers and public basins, and to fix the rates of landing, wharfage, dockage and use of the same."

Sub-section 19. Mr. Guerin moved to amend by inserting after the semi-colon in line 150, the words "or lying adjacent thereto."

Mr. Stage moved to amend by inserting after the word "repair," in line 150, the words "sewage disposal works."

Mr. Guerin moved to amend by inserting after the word "of," in line 151, the word "public."

All amendments are carried. When so amended, the section reads as follows:

Sub-section 19. "To construct, open, enlarge, excavate, improve, deepen, straighten, or extend any canal, ship canal or watercourse located in whole or in part within the corporation or lying adjacent thereto; to open, construct and keep in repair sewage disposal works, sewers, drains and ditches, to license ferries, to regulate the use of public docks and public landings, and to establish, repair and regulate water closets and privies."

Sub-section 20. Mr. Hypes moved to amend by inserting after the word "jails" in line 153, the word "morgues." Amendment carried.

When so amended, the section reads as follows:

Sub-section 20. "To establish, erect, maintain and regulate jails, morgues, houses of refuge and correction, workhouses, station houses, prisons and farm schools."

Sub-section 21. Mr. Hypes moved to amend by inserting after the word "oils," in line 157, the word "milk," and after the word "hogs," in line 157, the word "goats."

Strike out the word "produce" in line 158 and insert the words "food products."

Amendments carried. When so amended, the section reads as follows:

Sub-section 21. "To establish, erect and maintain buildings for public schools, public halls and market houses; to regulate markets, and provide for the inspection of spirits, oils, milk, breadstuffs, meats, fish cattle, milk-cows, sheep, hogs, goats, poultry, game, vegetables and all food products."

Sub-section 22. Mr. Guerin moved that the following be substituted for sub-section 22:

22. "To establish, maintain and regulate public baths and bath houses.

22a. "To establish, maintain and regulate free public libraries and reading rooms and to purchase books, papers, maps and manuscripts therefor and to receive donations and bequests of money or property for the same, in trust or otherwise.

22b. "To levy and collect a tax not exceeding one mill on each dollar of the taxable property of the municipality, annually, and to pay the same to a private corporation or association maintaining and furnishing a free

public library for the benefit of the inhabitants of the municipality, as and for compensation for the use and maintenance of the same and without change or interference in the organization of such corporation or association, requiring the treasurer of such corporation or association to make an annual financial report, setting forth all the money and property which has come into its hands during the preceding year, and its disposition of the same, together with any recommendation as to its future necessities.

22c. "To levy and collect a tax not exceeding one mill on each dollar of the taxable property of the municipality, annually, and to pay the same to a private corporation or association maintaining and furnishing a free public hospital for the benefit of the inhabitants of the municipality, as and for compensation for the use and maintenance of the same and without change or interference in the organization of such corporation, or association requiring the treasurer of such corporation or association to make an annual financial report, setting forth all the money and property which has come into its hands during the preceding year and its disposition of the same, together with any recommendation as to its future necessities."

On motion, the portion of the amendment relating to hospitals is referred to the Committee on Hospitals. The portion of the amendment referring to libraries is referred to the Committee on Libraries.

Sub-section 23. Mr. Willis moved to amend by striking out all of sub-section 23 and inserting the following:

Sub-section 23. "To restrain and prohibit the sale, exposure or giving away of books, papers, pictures and periodicals of an obscene or immoral nature."

Motion carried.

On motion, the committee recessed to 1:30 p. m.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

THURSDAY, SEPTEMBER 18, 1902.

9:30 O'CLOCK, A. M.

Pursuant to adjournment, the special committee for the consideration of municipal codes met in the Finance Committee room, Mr. Comings presiding.

On roll-call, the following members were present:

Comings,	Worthington,
Painter,	Denman,
Guerin,	Hypes,
Cole,	Willis,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Allen,	Maag,
Silberberg,	Huffman.

The Committee proceeded to take up the sections in order, the first section to be considered being section 39.

Section 39. Mr. Silberberg moved to amend by striking out the word "approval" in line 452 and inserting in lieu thereof the word "approved." Amendment carried.

With this amendment, section 39 was approved.

Section 40: Mr. Stage moved to amend by inserting after the word "departments" in line 454, the words "except the trustees of the sinking fund." Amendment carried.

Mr. Stage moved to amend by inserting after the word "estimate," the words "in itemized form," in line 455. Amendment carried.

Mr. Willis moved to amend by striking out all of line 457 after the period and all of lines 458, 459 and 460.

Amendment carried. When so amended, section 40 reads as follows:

Section 40 'On or before the first Monday in March of each year the several officers, boards and departmer 's, except the trustees of the

sinking fund, in every municipal corporation, shall report an estimate, in itemized form, to the auditor or clerk of the corporation, stating the amount of money needed for their respective wants for the incoming year and for each month thereof."

On motion, section 40, as amended, was approved.

Mr. Thomas inquired if in section 40, the estimates of the heads of departments were made to the mayor. Mr. Willis requested Mr. Guerin to read sections 85*b*, 85*c*, and 85*d*, which were read to the Committee.

A motion was carried to amend section 85*b*, by inserting after the word "mayor," the words "and also with the auditor," making the sentence read,—“to make and file with said mayor, and also with the auditor—”

With this amendment, section 85*b*, was approved.

Mr. Guerin read section 104, 104*a*, and on motion, the same were adopted.

Mr. Painter reported that the committee, to which had been referred the matter of drafting an amendment providing that the director of public works could buy the material for any public improvement, contract with any person, persons or corporation to do and superintend the work, for a certain percentage, had the following amendment to propose, to be added after the last word "effect" in section 96:

Provided, however, that in the event council shall, by a three-fourths vote of all the members elected thereto, authorize the director of public works to purchase supplies and material for use in the construction of any public improvement, the said director may purchase such supplies and materials and with the consent of council, as herein provided, make a contract with any person, persons or corporation for the construction of such improvement, upon such terms as council may approve."

On motion, the amendment is adopted, by a vote of 11 to 6.

Mr. Williams proposed the following amendment to section 90, to be inserted at the end of line 1023.

"Provided that no action, as provided in section 1777 and 1778, to enjoin the performance of a contract heretofore or hereafter entered into by a municipal corporation, shall be brought or maintained, unless such action is commenced within one year from the date of such contract, and this provision shall apply to pending cases."

On motion the amendment is referred to the sub-committee on organization of cities.

Mr. Thomas moved that the provisions of section 102 providing that the director of public safety shall appoint a chief of police, be referred to a committee of three to consider the advisability of so amending the section that the director of public safety shall be given executive authority in cities, and as that a chief of police will not be required in the smaller cities.

The motion was lost.

On motion of Mr. Bracken, the vote whereby the amendment to section 96 was adopted, is reconsidered, and the amendment is referred to a committee of three, composed of Messrs. Bracken, Painter and Sharp.

The Chairman stated that owing to an oversight the Committee on councilmanic salaries had not been named. He appointed on such committee, Messrs. Price, Denman and Stage.

Section 40: Mr. Willis moved that sub-sections 5 and 6 be stricken out. Motion carried.

Mr. Maag moved that in line 464 the words "if it deem best," be stricken out. Motion carried.

Mr. Willis moved to amend by inserting after the word "the" in line 473, the word "five." Amendment carried.

With these amendments the section is approved.

Section 42. On motion the section is approved without amendment.

Section 43. On motion, section 43, together with the subject of tax commissions, is referred to a sub-committee of three, which shall report to this Committee on Monday. The Chair appointed Messrs. Hypes, Thomas and Ainsworth.

Section 44: Mr. Willis moved to amend by adding at the end of line 516, the following: "Unless expressly otherwise provided by law, all money collected or received on behalf of the corporation shall be promptly deposited in the corporation treasury in the appropriate fund, and the treasurer shall thereupon give notice of such deposit to the auditor or clerk; and unless otherwise provided by law no money shall be drawn from the treasury except upon warrant of the auditor pursuant to an appropriation by council."

Amendment carried.

With this amendment the section is approved.

Section 45: On motion is approved without amendment.

Section 46: Mr. Willis moved to amend by striking out in line 521

the words "municipal corporations" and insert in lieu thereof the word "cities." Add the letter "s" to the word "council" in line 529. Insert before the word "may" in line 530 the words "of cities or villages," making the two lines read: "Provided, that councils of cities or villages may at any time, by the votes of three-fourths of all the members elected thereto,"

Amendment carried.

Mr. Cole moved to add, at the end of section 46, the following:

"Provided, that the provisions of this section shall in no way interfere with the provisions of an act entitled "An act to further provide for the transfer of public funds," passed May 6th, 1902. (95 O. L., 371.)

The motion was seconded and upon vote, carried.

Mr. Willis moved to amend by striking out the comma and inserting a period after the word "thereof" in line 527. Strike out the words, in lines 527, 528, and 529, "or credits remaining over at the end of the year, shall then no longer be open for payment therefrom and shall be recredited to the fund from which they were taken" and in lieu thereof insert—"All unexpended appropriations or balances of appropriations remaining over at the end of the year and all balances remaining over at any time after a fixed charge shall have been terminated by reason of the object of the appropriation having been satisfied or abandoned, shall revert to the funds from which they were taken and they shall then be subject to such other authorized uses as council may determine."

Amendment carried.

Mr. Willis moved to amend by striking out, in line 535, the word "transferred" and inserting in lieu thereof the words—"from which the transfer is to be effected."

Amendment carried.

With these amendment, section 46 was approved.

Section 47: Mr. Allen moved to amend by striking out, in line 546, the words "of every municipal corporation," and inserting in lieu thereof the words "in cities." Amendment carried.

Mr. Stage moved to strike out lines 552, 553 and 554 and insert in lieu thereof the following:

Section 47a. No contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for the expenditure of money, be passed by the council

or by any board or officer, of a municipal corporation, unless the auditor of the corporation, and if there is no auditor, the clerk thereof, shall first certify that the money required for the contract, agreement or other obligation, or to pay the appropriation or expenditure, is in the treasury to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose, which certificate shall be filed and immediately recorded; and the sum so certified shall not thereafter be considered unappropriated until the corporation is discharged from the contract, agreement or obligation, or so long as the ordinance, resolution or order is in force; and all contracts, agreements or other obligations, and all ordinances, resolutions and orders entered into or passed, contrary to the provisions of this section shall be void, and no party whatever shall have any claim or demand against the corporation thereunder; nor shall the council, or a board, officer or commissioner of any municipal corporation, have any power to waive or qualify the limits fixed by such ordinance, resolution or order, or fasten upon the corporation any liability whatever for any excess of such limits, or release any party from an exact compliance with his contract under such ordinance, resolution or order; nor shall any member of the council, board, officer or commissioner of the corporation, have any interest in the expenditure of money on the part of the corporation other than his fixed compensation; and a violation of any provision of this section shall disqualify the party violating it from holding any office of trust or profit in the corporation, and render him liable to the corporation for all sums of money or other thing he may receive contrary to the provisions of this section, and if in office he shall be dismissed therefrom; provided, however, that the authorities of any municipal corporation in which any electric light or waterworks company, or company for the collection or disposal of garbage, is organized, may contract with any such company for lighting the streets, alleys, lands, lanes, squares and public places in such corporation, or for furnishing water to such municipal corporation, or for the leasing of the electric light plant and equipment, or the waterworks plant or both, of such companies therein situated, for a period not exceeding ten years; and the provisions of this section shall not apply to such contracts; provided further, that this section shall not apply to contracts made by any village for the employment of legal counsel; and provided further that no contracts for street improvements extending for a period of one year, or more, upon which payments are to be made from time to time, as the work pro-

gresses, material is furnished or service performed, such municipal corporations are authorized to enter into such contract if the estimated expenditure thereunder does not exceed the taxes levied for such purpose during the term of the contract, and in such cases the certificate of the auditor or clerk, as herein provided shall not be required other than to state the amount of the levy.

Amendment carried.

With these amendments, section 47 is approved.

Mr. Willis, chairman of the assessment committee reported that the committee recommended that in lieu of sections 48, 49, 50 and 51 of the Nash Code, the following be inserted:

Section 48. (Sec. 2264 R. S.) Mr. Thomas moved to amend by inserting, in the line commencing "and any city" after the word "city" the words "or village." Amendment carried.

Mr. Thomas moved to amend by striking out the word "mentioned" in the clause "as hereinafter mentioned" and insert in lieu thereof the word "provided." Amendment carried.

Mr. Thomas moved to amend by inserting before the word "corporation" the word "municipal." Amendment carried.

The sub-committee on assessments recommends that in the provision providing for assessments according to valuation, the assessment be made upon the market value of the property. On motion, the recommendation of the sub-committee was adopted.

Mr. Denman moved that the rate of interest be made five per centum, instead of six per centum. On vote, this motion was lost.

With these amendments, section 48 was adopted.

When so amended the section reads as follows:

Section 48. In all cases provided for in section 2263 of the Revised Statutes, except for the appropriation of property, and in all cases where an improvement of any kind is made of an existing street, alley or other public highway, the council may decline to assess the costs and expenses in the last section provided, or any part thereof, or the costs and expenses of any part thereof of such improvement, except as hereinafter provided, on the general tax list, in which event such costs and expenses or any part thereof which may be so assessed on the general tax list, shall be assessed by the council on the abutting and such adjacent and contiguous or other benefited lots and lands in the municipal corporation, either:

1. In proportion to the benefit which may result from the improvement.

2. According to the value of the property assessed, or

3. By the foot frontage on the property bounding and abutting upon the improvement, as the council, by ordinance setting forth specifically the lots and lands to be assessed, may determine before the improvement is made, and in the manner and subject to the restrictions herein contained; also whether or not bonds shall be issued in anticipation of the collection of such assessment; and in any such case the assessment shall be payable in one to ten intallments, and at such times as the council may prescribe; and when bonds are issued in anticipation of the collection of such assessment, the interest accrued and to accrue, on said bonds, shall be considered and treated as part of the costs and expenses of such improvement, for which assessments may be made. And if said assessments, or any installment thereof shall not be paid at the time the same become due, thereafter they shall bear interest until the payment thereof at the same rate as the bonds issued in anticipation of the collection of such assessment; and the county auditor shall, annually, place upon the tax duplicate the penalty and interest herein provided for; and any city or village is hereby authorized to issue and sell its general street improvement bonds at a rate of interest not in excess of six per cent. per annum, to pay for the city or village's part or share as aforesaid, of the cost and expense of any such improvement and appropriation, and may levy taxes, in addition to the tax now by law authorized to be levied therein to pay such bonds and interest thereon.

On motion, the Committee recessed to 2:00 o'clock P. M., of the same day.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

THURSDAY, SEPTEMBER 18, 1902.

2:00 O'CLOCK, P. M.

Pursuant to recess, the Special Committee for the consideration of municipal codes met in the Finance Committee rooms.

On roll-call, the following members were present:

Comings,	Hypes,
Painter,	Willis,
Price,	Gear,
Cole,	Stage,
Williams,	Bracken,
Thomas,	Ainsworth,
Allén,	Maag,
Silberberg,	Huffman,
Worthington,	Brumbaugh,
Denman,	Sharp,

The Committee resumed the consideration of the report of the sub-committee on assessment, taking up section 48-1.

Section 48-1. (2301 R. S.) On motion, this section is approved as reported by the sub-committee, reading as follows.

Section 48-1. Before the passage of the resolution to make any improvement before mentioned, the council shall, by ordinance, establish the grade of the street, alley, or other public highway about to be improved, and also the grade of the curb thereof, and if one curb is to have a different elevation from the other, a separate grade shall be fixed for each, which said ordinance shall be published as required by law.

Section 48-2. (Sec. 2304 R. S.) On motion, this section as approved as reported by the sub-committee, reading as follows:

Section 48-2. Previous to the passage of the resolution mentioned in the next section, the council shall cause to be prepared plans, specifications, estimates and profiles of the improvement, by the city or village engineer or other competent person, which shall be prepared upon the grade

so established, and which shall plainly show the grade of the improvement with reference to the lots or lands of each property owner abutting upon said improvement, which plan, specifications, estimates and profiles shall be filed in the office of the director of public works in cities, and in the office of the clerk or engineer in villages, and shall remain there on file and be open to the inspection of all parties interested.

Section 48-3. (Sec. 2304, R. S.) Mr. Hypes moved to amend by inserting the words "once a week" after the word "published." Amendment carried.

On motion, the section is approved as amended, reading as follows:

Section 48-3. When it is deemed necessary by a city or village to make a public improvement, the council shall declare (two-thirds of the whole number elected thereto concurring) by resolution, the necessity of such improvement; said resolution shall contain a declaration of the necessity of the improvement, a statement of the general nature of the improvement and character of the materials thereof; of the mode of payment therefor, a reference to the plans, specifications, estimates and profiles thereof on file, as required by the last section, and an order for the giving of the notice, as required by this section. The council shall give twenty days' written notice of the passage of said resolution, to the owners of the property abutting upon the improvement, or to persons in whose names it may be assessed for taxation upon the tax duplicate, who may be residents of the county, which notice shall be served in cities and in villages by a person designated by the council, upon such persons as aforesaid, in the manner provided by law for the service of summons in a civil action; and the council shall cause the resolution to be published once a week for not less than two nor more than four consecutive weeks in one newspaper published and of general circulation in the corporation; provided, that in case of sewers, the twenty days' written notice to the owners of abutting property, or to the persons in whose names the abutting property is assessed, shall not be required; and provided, that where there is no newspaper published in such city or village, written notices shall be posted in twelve public places in the city or village; and the officer who serves the notices provided for by this section shall make a return of the time and manner of such service and shall verify the same by his affidavit, which shall be filed with the proper officer in cities and with the clerk of the corporation in villages, and the same or a certified copy

thereof shall be prima facie evidence of the service of the notice as therein stated.

Section 48-4. (Sec. 2315 R. S.) Mr. Gear moved to amend by striking out the words "auditor in cities, and with the clerk of the corporation in villages," and inserting in lieu thereof the words "clerk of the municipality." Amendment carried.

With this amendment, the section was approved, reading as amended:

Section 48-4. An owner of a lot or of land, bounding or abutting upon a proposed improvement, claiming that he will sustain damages by reason of the improvement, shall, within two weeks after the service, or the completion of the publication of the notice mentioned in the last section, file a claim in writing with the clerk of the municipality, setting forth the amount of the damages claimed, together with a general description of the property with respect to which it is claimed the injury will accrue; an owner who fails to do so, shall be deemed to have waived the same, and shall be barred from filing a claim or receiving damages; and this provision shall apply to all damages which will obviously result from the improvement, but shall not deprive the owner of his right to recover other damages arising, without his fault, from the acts of the corporation, or its agents: provided, that if subsequent to the filing of such claim, the owner sells property, or any part thereof, the assignee shall have the same right to damages which the owner would have had without the transfer.

Section 48-5. (Sec. 2316 R. S.) (Nash Code, Sec. 50.)

On motion, this section was approved as reported by the sub-committee, reading as follows:

Section 48-5. At the expiration of the time limited for filing claim for damages, as provided for in the last section, the council shall determine whether it will proceed with the proposed improvement or not, and whether the claims for damages filed as aforesaid shall be judiciously inquired into, as hereinafter provided, before commencing, or after the completion of the proposed improvement; and if it decides to proceed therewith, an ordinance for the purpose shall be passed; said ordinance shall set forth specifically the lots and lands to be assessed for the improvement; shall contain a statement of the general nature of the improvement and the character of the materials thereof; of the mode of payment therefor; a reference to the resolution theretofore passed for said im-

provement, giving the date of its passage and a statement of the intention of council to proceed therewith in accordance with said resolution, and in accordance with the plans, specifications, estimates and profiles provided for said improvement. In setting forth specifically the lots and lands to be assessed for the improvement it shall be sufficient to describe the same in said ordinance by metes and bounds, or by their appropriate numbers and where provisions as to damages is not made in this chapter, the provisions regulating the appropriation of property shall apply to the proceeding, so far as they are applicable.

Section 48-6. (Sec. 2317, 2216, R. S.) (Sec. 50, Nash Code.)

On motion the section was approved as reported by the sub-committee, reading as follows:

Section 48-6. When claims for damages are filed within the time limited, and the council, having passed an ordinance for making the improvement, determines that the damages shall be assessed before commencing it, the mayor or solicitor shall make written application for a jury, to the court of common pleas, or a judge thereof in vacation, or to the probate court of the county in which the corporation, or the larger part of it, is situated; and the court or judge shall direct the summoning of a jury, in the manner provided for the appropriation of property, and fix the time and place for the inquiry, and the assessment of such damages, which inquiry and assessment shall be confined to the claims filed as aforesaid.

Section 48-7. (Sec. 21, Nash Code.)

On motion the section was approved as reported by the sub-committee, reading as follows:

Section 48-7. The provisions of section 21 shall apply to the municipal corporation, or the owners of any property who may desire to prosecute error as in other cases.

Section 48-8. (Sec. 2330 R. S.) (Sec. 50, Nash Code.)

On motion this section is approved as reported by the sub-committee, reading as follows:

Section 48-8. In cases where the jury finds no damages, the costs of the inquiry shall be taxed against the claimant, and collected on execution, and in all other cases the costs shall be paid by the corporation.

Section 48-9. (Sec. 2303, R. S.) (Sec. 98, Nash Code.)

On motion this section was temporarily passed.

Section 48-10. (Sec. 2303, R. S.) (Sec. 97, Nash Code.)

Mr. Gear moved that the word "board" be stricken out and the words "director of public works" be inserted in lieu thereof.

Mr. Gear moved that the words "by recollection" in the last line be stricken out. Both amendments carried.

With these amendments the section was approved, reading as follows:

Sec. 48-10. In cities it shall be the duty of the head of the appropriate department, and in villages it shall be the duty of the council, to accept the lowest responsible bid, or reject all bids, and in case it accepts a bid it shall enter into a contract on behalf of the corporation with the successful bidder, duly authorized by resolution, and in case all bids be rejected, the director of public works, or council may order a readvertisement for bids.

Sec. 48-11. (Sec. 93, Nash Code.)

On motion this section is approved as reported by the sub-committee, reading as follows:

Section 48-11. It shall be the duty of the director of public works in cities, and of the civil engineer in villages, and if there be no civil engineer, of some competent person appointed for that purpose by the council, to superintend the performance of the work, and the character of the materials used in such improvement, to make all estimates, from time to time, of the value of the work done and materials furnished, and upon the completion of the work to report to the council whether or not the work has been done in all respects according to contract, and to report the amount due to the contractor thereon, and it shall be unlawful for the council to make any payment upon the contract without the certificate of the director of public works, civil engineer, or other person, as the case may be, that the amount proposed to be paid to the contractor by the corporation is justly due to such contractor, under the terms of the contract.

Section 48-12. Mr. Gear moved to amend by inserting after the word "land" the words "by metes and bounds or by the," and to strike out the words "in bulk by." Amendment carried.

With this amendment the section was approved, reading as follows:

Section 48-12. In all proceedings under this chapter, it shall be sufficient in designating the lots and lands to be charged with a special assessment, to describe the lots by their appropriate lot numbers, and the

land by metes and bounds, or by the description thereof on the tax duplicate of the city or village.

Section 48-13. (Sec. 2267, R. S.)

Mr. Denman moved to amend by striking out the words "two-thirds" and inserting in lieu thereof the words "three-fourths." Amendment carried.

Mr. Stage moved that the words "front feet" be stricken out and the words "foot frontage" inserted in lieu thereof.

Amendment carried.

Mr. Cole moved to amend by striking out the word "charged" and inserting the word "assessed" in lieu thereof. Amendment carried.

With these amendments the section was approved, reading as follows:

Section 48-13. No public improvement, the cost or part of cost of which is to be especially assessed on the owners of adjacent property, shall be made without the concurrence of three-fourths of the whole number of the members elected to council, unless the owners of a majority of the foot frontage to be assessed, petition in writing therefor, in which event the council shall be authorized, a majority of the whole number elected thereto concurring, to pass a resolution declaring it necessary to improve, and serve notices on all property owners to be charged as heretofore provided.

Section 48-14. (Sec. 2271, R. S.)

Mr. Gear moved to strike out the word "actual" before the word "value" and insert in lieu thereof the word "fair."

Amendment carried.

Mr. Gear moved to insert after the word "property" the words "after the improvement is made."

With these amendments, the section is approved, reading as follows:

Section 48-14. In municipal corporations the assessment specially assessed on any lot or land, for any improvement, shall not amount to more than twenty-five per centum of the fair market value of the property after the improvement is made, as determined by three disinterested freeholders of the corporation, appointed for that purpose by the mayor, and in no case exceed the special benefits accruing to the same by reason of said improvement, and the cost exceeding that per centum shall be paid by the corporation out of its general revenue, provided that not more

than one-tenth of the amount so assessed against any such lot or land shall be collected in any one year, except for sidewalks or sewer improvements.

Section 48-15. Mr. Painter moved to amend by striking out the word "actual" before the word "market" and inserting in lieu thereof the word "fair." Amendment carried.

Mr. Painter moved the amend by inserting after the word "land" the words "after the improvement is made." Amendment carried.

With these amendments the section is approved, reading as follows:

Section 48-15. In cities or villages when a petition subscribed by three-fourths in interest of the owners of property abutting upon any street or highway of any description between designated points, is regularly presented to the council for the purpose, the entire cost of any improvement of such street or highway, without reference to the value of the lands of those who subscribed said petition, may be assessed and collected in equal annual installments, proportioned to the whole assessment, in a manner to be indicated in the petition or if not so indicated, then in the manner which may be fixed by the council; and the interest on any bonds issued by the corporation, together with the annual installments herein provided for, and the costs of such proceedings and assessments shall be assessed upon the property so improved; but when the lot or land of one who did not subscribe the petition is assessed, such assessment shall not exceed twenty-five per centum of the fair market value of his lot or land, after the improvement is made, or the special benefit accruing to same by reason of said improvement; provided, that the guardian of infants or insane persons may sign such petition on behalf of their wards only when expressly authorized by the probate court on good cause shown.

Section 48-16. (Sec. 48, Nash Code.)

On motion this section is approved as reported by the sub-committee, reading as follows:

Section 48-18. In all cities the corporation shall pay such part of the cost and expense of each improvement as to the council may seem equitable and just, which part shall not be less than one-fiftieth of all such costs and expenses, and the same shall be certified by the corporation clerk to the county auditor and levied on all taxable property in the corporation, and collected as other taxes; provided, that any and all certifications to the auditor under this section of the one-fiftieth or more, if

ordered by the corporation authorities, shall be a part of the maximum levy heretofore authorized, provided further that the municipality shall pay the cost of intersections.

Section 48-17. (Sec. 2276, R. S.) (Sec. 48, Nash Code.)

On motion the section is approved as reported by the sub-committee reading as follows:

Section 48-17. When the whole or any portion of an improvement authorized by this title passes by or through a public wharf, market space, park, cemetery, structure for the fire department, waterworks, school building, infirmary, market building, workhouse, hospital, house of refuge, gas works, public prison, or any other public structure or public grounds within and belonging to the corporation, the council may authorize the proper proportion of the estimated costs and expenses of the improvement to be certified by the clerk of the corporation to the county auditor and entered upon the tax list of all taxable real and personal property in the corporation, and the same shall be collected as other taxes.

Section 48-18. (Sec. 2283, R. S.)

Mr. Gear moved to strike out the word "actual" before the word "value" and insert in lieu thereof the word "fair." After the word "estate," insert "after the improvement is made."

Amendment carried.

Mr. Cole moved to amend by inserting after the word "two" the words "or more." Amendment carried.

Mr. Willis moved to amend by striking out the words "front foot," and inserting the words "foot frontage." Amendment carried.

With these amendments the section is approved, reading as follows:

Section 48-18. Special assessments shall be so restricted that within a period of five years the same territory shall not be assessed for making two or more different improvements, in such amounts that the sum of the assessments shall exceed twenty-five per centum of the fair market value of the real estate, after the improvement is made; provided, further, that when in addition to above limitation where an assessment is made by the foot frontage corner lots shall not be assessed on their lengthwise side in an amount greater than their front.

Section 48-19. (Sec. 2301, R. S.)

Mr. Willis moved to amend by inserting after the word "pavement" the word "sidewalks." Amendment carried.

With this amendment, the section is approved, reading as follows:

Section 48-19. When a street, alley, public highway, wharf or landing within the corporation is graded or pavements are constructed in conformity to grades established by the authorities of the corporation, and the expense is assessed on the lots or lands benefited thereby, the owners shall not be subject to any special assessment occasioned by any subsequent change of grade in such pavement, sidewalk, street, alley, public highway, wharf or landing, unless a petition for such change is subscribed by a majority of the owners of such lots or lands; and the expense of all improvements occasioned by such change of grade, not so petitioned for, shall be chargeable to the general fund of the corporation.

Section 48-20. (Sec. 2307, R. S.)

Mr. Gear moved to amend by inserting after the word "city" the words "or village." Amendment carried.

When so amended the section was approved, reading:

Section 48-20. On the written petition of the owners of more than two-thirds of the foot frontage on any street, or part thereof, the council of any city or village, may provide by ordinance for keeping in repair, planting and taking care of shade trees, sprinkling with water, and sweeping and cleaning any streets or part thereof, which have been improved under any of the provisions of this chapter, and removing noxious weeds from vacant lots; and one or more of such objects may be embraced in one petition or ordinance, and may also be included in the petition and ordinance for the improvement of such street or part thereof; said petition shall be filed and recorded by the clerk of the city, or village, and shall be operative from and after the date of its record, and the record shall be presumptive evidence of its contents and the signatures thereto.

Section 48-21. On motion this section is approved as reported by the sub-committee, reading as follows:

Section 48-21. In cities, the director of public works and in villages the street commissioner, shall supervise and direct the keeping in repair of such street or alley, or part thereof, planting and taking care of shade trees, and taking care of and sprinkling with water, and sweeping and cleaning such streets, and the council of each city may, by ordinance, appoint two citizens of the city, owners of abutting property on each street, to serve with such officer under his direction, and without

compensation, in the performance and exercise of said powers and in the performance of said duties. The force and operation of said petition authorized by the preceding section, shall cease seven years from the date of its record, but it may be renewed at any time by another like petition, which, when filed and recorded, shall have the same force and effect as the first one.

Section 48-22. On motion, this section is approved as reported by the sub-committee reading as follows:

Section 48-22. The board consisting of the director of public works or street commissioner, as the case may be, and the two citizens aforesaid in carrying out the purposes of such ordinances, may make such contracts as he shall deem best, but no contract shall be made for a longer period than one year.

Section 48-23. Mr. Allen moved to amend by striking out the word "twenty" and insert in lieu thereof the word "thirty."

Amendment carried.

With this amendment the section was approved, reading as follows:

Section 48-23. In sprinkling the streets and avenues, whether by private contract, or otherwise, a dry strip shall be left on all streets and avenues which are not less than thirty feet in width between curbs; on all streets and avenues paved with asphalt, brick, or granite, said dry strip shall not be less than four feet in width, and on all other streets and avenues said strip shall not be less than three feet in width; provided, that bicycle riders shall have the right of way on said dry strip at all times. Any person or persons failing to leave the dry strip in sprinkling any street as herein provided, or any person or persons obstructing any bicycle rider, or refusing to allow such bicycle rider to have the right of way of said dry strip, as provided herein, shall be deemed to have committed a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five dollars.

Honorable James Kennedy, of Youngstown, was given the floor and addressed the committee, protesting against the waterworks of that city being taken out of the control of the board of waterworks trustees, and placed under the control of the board of public safety. On motion of Mr. Willis, the matter was referred to a committee to be appointed by the chair.

The chair named Messrs. Maag, Denman, and Painter.

Section 48-24. (Sec. 2312 R. S).

The council of any city or village may provide by ordinance for keeping in repair, planting and taking care of shade trees, sprinkling with water, and sweeping and cleaning any streets or part thereof which have been improved under any of the provisions of this chapter, and one or more of such subjects may be embraced in one ordinance, and the cost and expense thereof shall be charged upon the lots or lands abutting upon such streets, or parts thereof, by the foot frontage, but not exceeding the benefits, accruing thereto, which charge may be made by one or more assessments; the payment of such assessments, with interest, may be enforced by suit in the name of the corporation against the owners of such lots or lands, or if not paid, they may certify to the county auditor and may be placed by him upon the duplicate and collected as other taxes.

Section 48-25. (Sec. 2269 R. S.).

On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-25. In making special assessments, according to valuation, the council shall be governed by the provisions of section 48-14 of this act, if the land is subdivided and the lots are numbered and recorded; but if there is land not subdivided into lots, the council shall fix the value of the lots or the value of the front of such land to the usual depth of lots, by the average of two blocks, one of which shall be next adjoining on either side; and if there are no blocks so adjoining, the council shall fix the value of the lots or lands to be assessed so that it will be a fair average of the assessed value of other lots in the neighborhood, and if in making a special assessment by the foot frontage, there is land bounding or abutting upon the improvement not subdivided into lots, the council shall fix the depth of such lands so that it will be a fair average depth of the lots in the neighborhood, which shall be subject to such assessment.

Section 48-26. (Sec. 2280 R. S.).

Mr. Gear moved to amend by striking out, after the word "corporation" the words "or vicinity." Amendment carried.

With this amendment the section was approved, reading:

Section 48-26. In cases wherein it is determined to assess the whole or any part of the cost of any improvement upon the lots or lands bounding or abutting upon the same or upon other lots and lands benefitted thereby, as provided in section 48, the council may appoint three disinterested freeholders of the corporation to report to council the estimated assessment of such cost on the lots and lands to be charged therewith,

in proportion as nearly as may be, to the benefits which may result from the improvement to the several lots or parcels of lands so assessed, a copy of which assessment shall be filed in the office of the clerk of the corporation for public inspection.

Section 48-27. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-27. On the day appointed by the council for that purpose, the board, after taking an oath before the proper officer, as to their honesty and impartiality to discharge their duties, shall hear and determine all objections to the assessment, and shall equalize the same, as they may think proper, which equalized assessment they shall report to the council, which shall have the power to confirm the same, or set it aside, and cause a new assessment to be made and appoint a new equalizing board possessing the same qualifications, which shall proceed in the manner above provided.

Section 48-28. (Sec. 2281 R. S.).

On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-28. When the assessment is confirmed by the council, it shall be complete and final.

Section 48-29. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-29. The council of cities and villages may provide by ordinance for the construction and repair of all necessary sidewalks, or parts thereof, within the limits of the corporation, and may require by the imposition of suitable penalties or otherwise, the owners and occupants of abutting lots and lands to keep the sidewalks and gutters in repair, free from snow or any nuisance.

Section 48-30. (Sec. 2339 R. S.).

On motion this section is approved as reported by the sub-committee, reading as follows:

Section 48-30. When the council of cities or villages declares by resolution that certain specified sidewalks or gutters shall be constructed or repaired, the mayor shall cause a written notice of the passage of such resolution to be served upon the owner or agent of the owner of each parcel of land abutting on such sidewalk or gutter, who may be a resident of such city or village, in the manner provided by law for the service of summons in a civil action, and shall return a copy of such notice with the time and manner of service indorsed thereon, signed by the officer serving

the same, to the proper officer in cities, and to the clerk of the corporation in villages, who shall file and preserve the same; and for the purpose of such service, if the owner is not a resident of the city or village, any person charged with the collection of rents or the payment of taxes on such property or having general control thereof in any way, shall be regarded as the agent of the owner; and such return shall have the like force and effect as the sheriff's return on summons in a civil action.

Section 48-31. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-31. If it appear in the return in any case of the notice provided for in the preceding section, that such owner is a non-resident, or that neither any such owner or agent nor their place of residence could be found, then a notice given by publication of a copy of the resolution in some newspaper of general circulation in the corporation, in the manner heretofore provided for the publication of resolutions for street improvements shall be deemed sufficient notice to such owner, not so found, but such publication shall not be necessary in the case of construction or repair of sidewalks or gutters, where such notice is served upon the owner or agent as herein provided.

Section 48-32. Mr. Willis moved to amend by striking out the words "or gutters," wherever the same appear throughout the section. Amendment carried.

With this amendment the section is approved, reading:

Section 48-32. When the council declares by resolution that a certain specified sidewalk shall be cleaned so as to be free from weeds, grass, dirt or any other objectionable substance, it shall then be the duty of the mayor to cause notice of the passage of such resolution to be served upon the owners of each parcel of land abutting on such sidewalk ordered cleaned. Such notice shall be given in the same manner as is provided for service of notice to construct sidewalks. If said sidewalks are not cleaned within five days after the service of the notice or completion of the publication, the proper officer in cities and the street commissioner of villages shall have the same done at the expense of the owner, and report the cost thereof to council. The cost of such cleaning shall constitute a lien upon the property abutting on such sidewalk from the date the same is so reported to council. If the cost of said cleaning is not paid to the proper officers in cities, or the clerk of the village, within ten days from the time the same has been so reported to the proper officer or

council, the said clerk in said villages and the proper officers in cities, shall certify the same back, together with a penalty of twenty per centum thereon, to the county auditor, who shall place the same on the tax duplicate and collect such costs and penalties in the same manner as other taxes are collected.

Section 48-33. (Sec. 2330, R. S.)

Mr. Willis moved to amend by striking out the words "or gutters," wherever the same occur throughout the section. Amendment carried.

When so amended, the section was approved, reading:

Section 48-33. If such sidewalks are not constructed within thirty days, or not repaired within ten days from the service of the notice, or completion of the publication, the director of public works in cities and council in villages may have the same done at the expense of the owner, and such expense shall be assessed on all the property bounding or abutting thereon, and shall be collected in the same manner, with a penalty of twenty per centum and interest after failure to pay at the time fixed by the assessing ordinance as in other cases of improvements.

Section 48-34. (Sec. 2330a, R. S.)

Mr. Willis moved to amend by striking out the words, after the word "purpose;"—"provided, that the council may issue the bonds at their par value in payment of contracts without advertising for their sale." Amendment carried.

When so amended, the section was approved, reading as follows:

Section 48-34. In cities and villages, whenever sidewalks, curbing or gutters are to be constructed pursuant to a resolution of council, the director of public works in cities and council in villages, may construct such sidewalk or parts thereof, or curbing or gutters or parts thereof, and assess the costs and expense thereof upon all bounding or abutting property according to the rule heretofore provided for street improvements; and to carry out such purpose, council is hereby authorized to issue bonds of such city or village, in denominations not to exceed one thousand dollars, each to be payable in not less than one nor more than ten years, and to bear interest at a rate not to exceed six per centum per annum, which bonds shall not be sold for less than their par value and the proceeds arising from such sales shall be applied to the cost of such improvements, the costs of issuing such bonds, the payment of interest thereon, and to no other purpose. The assessments upon the abutting property shall be in such amounts as will be sufficient to provide for the pay-

ment of such bonds and the interest due thereon as the same mature, and such assessments shall be certified to the auditor of the county in which such city or village is situated, to be placed upon the duplicate, and shall be a lien upon all property so assessed if such assessment is not paid within the time fixed in the assessing ordinance.

Section 48-35. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-35. In all cases where it is deemed necessary by a municipal corporation to build or repair sidewalks along that portion of any street, alley or public highway which passes by or through any public wharves, market spaces, parks, cemeteries, public grounds or buildings, the proper proportion of the estimated expense thereof shall be by the council of such corporation, levied, certified and collected in the manner provided in the preceding subdivision of this chapter for the assessment of street improvements.

Section 48-36. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-36. The council of any city or village may upon the petition of the owners of two-thirds of the foot frontage of lots abutting upon both sides or on one side of any streets or portion of streets between designated points of such village or city, provide by ordinance for the construction and improvement of said walks along said streets or portion of streets designated between given points, of such material and width as the said petition may designate, and the president of council in cities and the mayor in villages shall forthwith appoint a sidewalk committee of three citizens, one of whom shall be a member of council, and the other two from the property owners who shall petition for said sidewalk or walks, which committee shall receive no compensation for their services. Such committee shall have estimates made for such work and make the contracts therefore, which contracts shall not be valid until submitted to and approved by council and said committee who shall have entire supervision of the construction of such work and no part of the expense thereof shall be paid by council until such work and the bills therefor shall be approved by said committee. One half of the cost of said sidewalk or walks, shall be defrayed by said village or city, and the other half by the property owners upon such streets or portions of streets between designated points so petitioned.

Section 48-37. (Sec. 2334b, R. S.)

Mr. Gear moved to amend by striking out, after the word "per cent" the following words: "which shall be given at not less than par to the contractors who may have made such improvement in payment of the costs thereof, or may—" and to insert in lieu thereof the words "which shall." Amendment carried.

With this amendment, the section was approved, reading:

Section 48-37. Whenever an improvement is ordered by council and made under the provisions of the foregoing section, council shall, if so requested in the petition therefor, or may, of its own discretion, provide for the payment of the expenses thereof which are chargeable upon the abutting property, in equal annual installments, and make corresponding annual assessments therefor on such property if such mode of payment shall be requested by the property owners, or otherwise, ordered, and the council shall be authorized and required to issue the bonds of such city or village corresponding in amount and time of payment with such annual installments and bearing a rate of interest not exceeding six per centum, which shall be sold at not less than par and the proceeds thereof applied to the same purpose. And council shall assess upon such abutting property an amount which will be sufficient to provide in annual installments for the payment of such bonds and interest, as they shall mature, and the necessary expense of such assessment shall be certified and be a lien upon the assessed property.

Section 48-38. (Sec. 2334c, R. S.)

On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-38. The council of any city or village is hereby authorized to borrow money at such times and in such amounts as may be required for the purpose of defraying one-half of the cost of such sidewalks as hereinbefore provided, and it is further empowered to issue the bonds of such city or village for the money so borrowed; such bonds to bear interest at a rate not exceeding six per centum per annum, and and such bonds shall be of such denominations and shall mature at such times as council may determine, provided, such bonds shall not be sold for less than their par value. Said council is hereby authorized to levy such taxes upon the taxable property of the corporation, in addition to the taxes now allowed by law, as may be necessary to pay the interest and principal of the said bonds when the same becomes due, such taxes

to be levied and collected as taxes for general purposes are levied and collected.

Section 48-39. (Sec. 2366 R. S.).

SEWERS.

Mr. Willis moved to amend by inserting after the word "village" the words "or some person employed by the municipality."

Amendment carried.

With this amendment, the section is approved, reading as follows:

Section 48-39. When it becomes necessary, in the opinion of the council of a city or village, to provide a system of sewerage for such municipal corporation, or any part thereof, it shall be the duty of the engineer of such city or village, or some person employed by the municipality, to devise and form, or cause to be devised and formed, a plan of the sewerage of the whole city or village, or such part thereof as may be designated by the council; and such plans shall be devised with regard to the present and prospective needs and interests of the whole city or village; which plans shall be by him reported to the council for its confirmation.

Section 48-40. (Sec. 2370 R. S.).

On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-40. The plan so devised shall be formed with a view of the division of the corporation into as many sewer districts as may be deemed necessary for securing efficient sewerage. Each of the districts shall be designated by a name and number, and shall consist of one or more main sewers, with the necessary branch or connecting sewers; the main sewers having their outlet in a river, or other proper place. The districts shall be so arranged as to be independent of each other, so far as practicable.

Section 48-41. (Sec. 2341 R. S.).

On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-41. The plan shall be so prepared as to show the size, location, inclination and depth below the surface of all main sewers and all branch sewers connected therewith.

Section 48-42. Mr. Willis moved to amend by striking out the word "auditor" and inserting in lieu thereof the word "clerk."

Amendment carried.

When so amended the section was approved, reading as follows:

Section 48-42. When such plan of sewerage has been prepared, the council shall give at least ten days' notice in one newspaper of general circulation in the corporation, stating that such plans have been prepared and are filed in the office of the clerk for examination and inspection by parties interested.

Section 48-43. Mr. Willis moved to amend by striking out the word "engineer" and interting in lieu thereof the word "council." Strike out the word "he" and insert the word "it." Strike out the word "him and insert the word "it." Amendments carried.

When so amended the section was approved, reading as follows:

Section 48-43. Any objection to said plan of sewerage shall then be made to the council, and it may, if it deem proper, amend or correct the same, and shall thereupon file the plans as amended; or if no amendments be made, then the original plans, duly certified by it in the office of the auditor or clerk.

Section 48-44. Mr. Willis moved to amend by striking out the word "sixty" and inserting in lieu thereof the word "thirty."

Amendment carried.

With this amendment the section was approved, reading as follows:

Section 48-44. When the council shall approve such plan, a complete copy thereof, together with a certified copy of the ordinance of the council approving and adopting such plan, shall be forwarded by the clerk of council, or village clerk, to the state board of health, which duty it shall be to examine such plans and the territory covered thereby, and within thirty days from the receipt thereof, report in writing to said council, its approval or disapproval thereof; and in case of disapproval, said board shall state in detail its objection to said plan, and any recommendations it may have for the improvement thereof. The said report to the state board of health shall be preserved. The said ordinance of council adopting such plan shall not be valid until approved by said state board of health, unless the said state board of health shall fail or neglect to act upon the same within thirty days from the date it receives the certified copy of the ordinance.

Section 48-45. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-45. Council shall have the right at any time after the construction of all or a part of the sewers provided for by such plan of sewerage to amend such plans, by providing for such intercepting sewers,

without regard to sewer districts, as shall be necessary to furnish an additional outlet for the system so adopted, and to provide for the construction of the same as is provided in this subdivision, and apportion the cost and expense thereof, equitably among the districts directly or indirectly sewered in whole or in part thereby, and assess and collect the amount apportioned to each district as provided in this subdivision; or the council may apportion a part only of such cost and expense among the districts directly or indirectly sewered in whole or in part thereby, and provide for the payment of the residue thereof by the city at large. The council may also amend such plans by making new sewer districts, or subdividing districts already established, giving a name and number thereto, and provide for the construction of the main and branch sewers therein, and may assess the cost and expense thereof upon the lots and lands within the corporation according to benefits; but such amended plan shall be submitted to the state board of health and shall be approved by it, as provided in the last section.

Section 48-46. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-46. After such plans have been adopted and approved, as heretofore provided, the council shall designate such portions of the work as may be required for immediate use, and the designation shall be by districts, and shall show what districts or part thereof, is to be improved; and the council may order the engineer to make an estimate of the cost and expense of constructing the work, or such portions thereof as may have been designated in accordance with the last section, according to such plans, and report the same to council.

Section 48-47. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-47. When it is deemed necessary by a city or village to construct all or a part of the sewers provided for in said plan, the council shall declare by resolution the necessity of such improvement. Said resolution shall contain a declaration of the necessity of said improvement, a statement of the district or districts or parts thereof proposed to be constructed, the character of the materials to be used, a reference to the plans and specifications, where the same are on file, and the mode of payment therefore, and the council shall cause the resolution to be published once a week for not less than two nor more than four consecutive weeks in one newspaper published and of general circulation in the corporation.

Section 48-48. Mr. Cole moved to amend by inserting after the word "annual" the following words "or two to twenty semi-annual."

Amendment carried.

With this amendment the section was approved as reported by the sub-committee, reading as follows :

Section 48-48. After the publication of said notice, the council shall determine whether it shall proceed with the proposed improvement or not, and if it decides to proceed therewith, an ordinance for the purpose shall be passed. Said ordinance shall contain a statement of the district or districts or parts thereof proposed to be constructed, the character of the material to be used, a reference to the plans and specifications, the mode of payment therefor, and said ordinance shall provide for assessing the cost and expenses of the improvement upon the lots and lands in each district by the foot frontage, or according to the valuation of the same, as determined by the provisions of section 48-14 of this act, or according to benefits, in from one to ten annual, or two to twenty semi-annual installments; and the lots and lands in each district shall be assessed by districts, except that the cost of the construction of any main sewer which serves as a common outlet for two or more districts shall be apportioned between the districts, and the cost assessed on the lots and lands in the respective districts in proportion to the benefits accruing thereto.

Section 48-49. On motion, this section is approved as reported by the sub-committee, reading as follows :

Section 48-49. The clerk shall advertise for bids, and the contract shall be awarded to the lowest responsible bidder, in the manner heretofore provided in the ordinance for the improvement of streets.

Section 48-50. Mr. Cole moved to amend by inserting after the word "annual" the words "or two to twenty semi-annual."

Amendment carried.

When so amended, the section was approved, reading as follows :

Section 48-50. Upon the certificate of the engineer showing the completion of the work, the council shall, by ordinance, assess the real estate as provided in the ordinance to improve, to be paid in one to ten annual, or two to twenty semi-annual installments. Any party so assessed shall have the option of paying his portion of such assessment in full within a period of thirty days from the date of the levy thereof, upon due notice being given; and upon his failure to do so, bonds may be issued in anticipation of the collection of said assessments in the same manner as provided for the improvement of streets.

Section 48-51. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-51. The council may, if in its opinion expedient, provide for the construction of main drains and branch drains connecting therewith without previously adopting any plan of sewerage or division of the territory of the municipal corporation or any part thereof, into districts, and may assess the cost and expense thereof upon such lots or lands as shall be designated in the ordinance to improve, or the same may be paid out of the sewer fund, or by the municipal corporation at large, as council shall determine, and such proceedings shall be had in respect to such improvements and assessments as are provided for in this subdivision for the construction of main or branch sewers according to a previously adopted plan.

Section 48-52. Mr. Gear moved that this section be referred to a committee of three for amendment. Motion carried. The chair appointed on that committee, Messrs. Gear, Price and Thomas.

Section 48-53. Mr. Gear moved to strike out the words "city clerk in cities, or if a village, with the village clerk," and insert in lieu thereof, the words "clerk of the municipality."

Amendment carried.

With this amendment, the section is approved, reading as follows:

Section 48-53. The respective councils of any two or more municipal corporations within any county shall have power to provide for the construction of a main sewer and branches jointly by such corporations for the purpose of sewerage and draining such corporations, or any part thereof, and to agree upon a plan and location of such main sewer, and the terms and conditions on which the same shall be constructed and maintained for common use, and the portion of the cost and expense thereof to be paid by each corporation. For this purpose said corporations may jointly appropriate land either within or without their respective corporations. The council of each corporation shall provide for assessing such portions of the cost and expenses of constructing any such main sewer or drain as it shall determine to be a proper charge upon the lots and lands within such respective corporations benefited thereby, and the excess over the assessment herein authorized shall be paid out of the sewer fund of the corporations respectively; or if the corporations or either of them are divided into sewer districts, out of the sewer fund of the district or districts directly or indirectly sewerage in whole or in part thereby; and in case more than one district is so sewerage thereby, the council shall apportion the amount to be paid by each district, or assessed against the prop-

erty therein, or the said councils, or either, may determine to place the whole cost, or any part thereof, upon the general duplicate; and bonds may be issued by either or both of said corporations to provide for the payment of the cost and expense thereof as is provided in this subdivision, and the proceedings for the construction of such main sewer or drain, shall, as far as applicable, be conducted according to the provisions of this subdivision. The advertisement for bids for the construction thereof shall be joint, and shall be filed with the clerk of the municipality, and the same shall be reported to the council of each corporation. Any contract made for the construction of such sewer shall be in the names of such corporations jointly, but each corporation shall be liable only for such portion of the cost and expense as shall be specified in the ordinances providing for the same.

Section 48-54. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-54. Said main sewer or drain, branches and appurtenances, on completion, shall be the property of said corporations jointly, and said corporations may take all necessary steps to keep the same in proper repair and condition and to protect the same from damage and improper use. Said corporation shall have the power, by ordinance jointly passed, to prescribe the terms and conditions, including the price to be paid therefor, upon which other municipal corporations, public institutions or individuals, may connect with and use such main sewer or drain, and the disposition of the fund arising therefrom.

Section 48-55. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-55. The council of any city or village shall have power to borrow money, at a rate of interest not exceeding six per centum per annum, to pay the cost and expense of constructing the main sewers, main drains, branches and ditches provided for in this subdivision.

Section 48-56. On motion, this section is approved as reported by the sub-committee, reading as follows:

Section 48-56. The councils of cities and villages, in accordance with the provisions of this title, may provide for the construction and maintenance of such sewer pumping stations, and equip the same with the necessary machinery and apparatus and provide the necessary building therefor, as the council shall deem necessary.

Section 48-57. Mr. Gear moved to amend by adding after the word "council," in the last line "and approved by the state board of health."

Amendment carried.

When so amended, the section was approved, reading as follows:

Section 48-57. Power and authority is hereby granted to any city or village to purchase and hold land outside of the corporate limits, to be used as a sewage farm, to construct and maintain thereon all the necessary appliance for the proper disposition of the sewage of such city or village, under such rules and regulations as shall be prescribed by council and approved by the state board of health.

Section 48-58. On motion, this section is approved, as reported by the sub-committee, reading as follows:

Section 48-58. All assessments provided for in this act shall be subject to the provisions of sections 2263, 2318, 2321, 2268, 2284, 2285, 2286, 2287, 2288 2289, 2290, 2291, 2294, 2295, 2297, 2298, 2299, 2300, 2313, 2314, 2326, 2327, 2278, 2279, 2282 and 2332 of the Revised Statutes, so far as the same may be applicable, and such sections shall be and remain in full force and effect.

Mr. Willis moved that the sections as amended and approved be adopted in place of sections 48, 49, 50 and 51, contained in House Bill No. 5.

The motion was carried.

Mr. Cole, chairman of the committee to which was referred section 73, reported that it was the sentiment of the committee that section 73 be allowed to stand as it is.

On motion, the report of the committee was accepted and section 73 adopted.

On motion the committee adjourned to meet Monday morning, September 22d, at 9:30 o'clock.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

SEPTEMBER 23, 1902.

9:30 A. M. TUESDAY.

The Special Committee for the consideration of Municipal Codes met in regular session, Mr. Willis presiding.

Mr. Stage was appointed secretary pro tem. On roll-call the following members responded:

Guerin,	Denman,
Price,	Hypes,
Cole,	Willis,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Allen,	Maag.
Silberberg,	

The sub-committee on Councilmanic Salaries submitted the following report:

Report of Messrs. Price, Denman and Stage, members of the Sub-Committee on Salaries of Councilmen.

Section 82. Council shall fix the salaries of all officers, clerks and employes in the city government, except as otherwise provided in this act, and all fees pertaining to any office shall be paid into the city treasury. The salaries so fixed shall not be increased or diminished during the term for which any officer, clerk or employe may have been elected or appointed; provided, that the compensation of members of council, if any is fixed, shall be in accordance with the time actually consumed in the discharge of their official duties, but in no event shall exceed one hundred and fifty dollars per year each, when, according to the last or any succeeding federal census in cities having a population of twenty-five thousand, or less, and for every thirty thousand additional inhabitants determined as above, to the twenty-five thousand, shall not exceed an

additional one hundred dollars per year each for each additional thirty thousand inhabitants, and provided further, that the salaries of members of council shall be paid semi-monthly, and a proportionate reduction in said salaries shall be made for the non-attendance of any member upon any regular or special meeting thereof.

On motion, the report of the sub-committee is adopted.

On motion, the Committee proceeded to the report of the sub-committee on the Merit System. The report was submitted by the Committee and read by Mr. Guerin.

It was stated that while the report was signed by Messrs. Guerin, Stage and Chapman, the members of the sub-committee, Mr. Stage signed the report with the understanding that he should object, unless the provisions of the act were extended to all of the departments of the city government. Also, that Mr. Chapman objected to the requirement, "Provided, however, that said commission shall have the right to require such person, before hearing such appeal, to give bond for the payment of the costs of such appeal in such amount as it may deem necessary." Otherwise, the members of the sub-committee are in accord as to the report.

At the close of the reading of the report, the Committee recessed to allow the members to attend the session of the House.

SEPTEMBER 23, 1902.

10:15 A. M. TUESDAY.

The Committee came to order and proceeded to take up the report of the sub-committee on the merit system.

Mr. Stage moved the adoption of the report.

Motion seconded.

Mr. Williams moved to amend the report of the sub-committee by striking from the civil service clause, the health department.

Mr. Silberberg seconded the motion.

On roll-call the motion was carried, nine ayes, six nays.

Mr. Bracken moved to amend by inserting in line 1581, after the word "character," the following, "provided, that no educational test shall be made for an applicant other than that actually needed for the particular position applied for."

Amendment carried.

Mr. Stage moved to amend the report as amended, by retaining that clause which provides that the present members of the three departments of police, fire and health, shall be retained, unless removed for cause.

Later, Mr. Stage withdrew this motion.

Judge Thomas moved that the report of the sub-committee be re-committed to the same committee, with instructions to formulate a report, embodying a local merit system, in place of the state board provided for in the report.

Mr. Williams seconded the motion.

Mr. Williams moved to amend the motion by referring the report back to the same committee, with instructions to provide a merit system similar to the one now in the report, but applying only to the fire and police departments.

Mr. Silberberg seconded the amendment.

On roll-call the motion to amend was lost, sixteen nays, one aye.

On vote, the motion of Judge Thomas, was lost.

Mr. Silberberg moved to amend the report by striking out the word "ten" in line 1836, and inserting in lieu thereof the word "forty."

Amendment seconded.

Mr. Price moved to amend the amendment by striking out "forty" and inserting "twenty-five."

Amendment seconded, and on vote was lost; ayes, five; nays, twelve.

Upon vote, the amendment proposed by Mr. Silberberg was carried; ayes, nine; nays, eight.

On motion, the Committee recessed to meet at 2:00 P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

September 23, 1902.

2:00 o'clock P. M. Tuesday.

Pursuant to recess, the special committee met in the finance committee room. Mr. Hypes presiding.

On roll-call, the following members responded to their names :

Painter,	Denman,
Guerin,	Hypes,
Price,	Willis,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Chapman,	Maag,
Allen,	Huffman,
Silberberg,	Brumbaugh,
Worthington,	Sharp.

The sub-committee on libraries announced, through its chairman, Mr. Stage, its readiness to submit a report.

On motion, the committee proceeded to the consideration of the report, as presented by Mr. Stage, as follows:

On page 7, sub-section, line 162, after the word "otherwise," insert a period, and strike out the rest of the sub-section.

In line 1058, section 94, strike out the word "libraries."

On page 61, after section 135, insert section 135a, as follows:

Section 135a. The custody, control and administration, together with the erection and equipment, of free public libraries established by municipal corporations, or established by the terms of any gift, grant, device or bequest, shall be vested in six trustees, not more than three of whom shall belong to the same political party, who shall be appointed by the mayor to serve without compensation for a term of four years and until their successors are appointed and qualified; provided, however, that in the first

instance three of such trustees shall be appointed for a term of two years, and three thereof for a term of four years, and all vacancies shall be filled by like appointment for the unexpired term. Said trustees shall employ the librarians and necessary assistants, fix their compensation, adopt the necessary by-laws and regulations for the protection and government of the libraries and all property belonging thereto, and exercise all the powers and duties connected with and incident to the governmentt, operation and maintenance thereof. It shall require four of said trustees to constitute a quorum and four votes to pass any measure or authorize any act, which votes shall be taken by the yeas and nays and entered on the record of the proceedings of said trustees, and in the making of contracts said trustees shall be governed by the provisions of law applicable thereto.

The council of any city or village, in which the residents have not the privilege of a public library operated under public authority, may contract with a duly incorporated library association owning and operating a library within such city or village, for the public use of such library by the residents of such city or village; and for the purpose of paying for such use, the city or village council may levy on each dollar of taxable property within such city or village, in addition to all other levies authorized by law, a tax not exceeding one mill.

Mr. Guerin moved to amend the report of the sub-committee, by substituting the following for the last clause read by Mr. Stage, beginning with the words, "The council of any city or village."

"The council of each city shall have power to levy and collect a tax not exceeding one mill on each dollar of the taxable property of the municipality, annually, and to pay the same to a private corporation or association maintaining and furnishing a free public library for the benefit of the inhabitants of the municipality as and for compensation for the use and maintenance of the same, and without change or interference in the organization of such corporation or association, requiring the treasurer of such corporation or association to make an annual financial report, setting forth all the money and property which has come into its hands during the preceding year, and its disposition of the same, together with any recommendation as to its future necessities."

Mr. Silberberg seconded the motion, and the amendment was carried.

The question then being on the adoption of the report as amended, on vote, carried, and the report was approved.

The committee then proceeded to take up the report of the sub-committee on judiciary, as presented by Mr. Stage, chairman.

Mr. Williams moved to amend by inserting in section 109, after the word "council," the words, — "and such additional compensation as the county commissioners shall allow."

Amendment carried.

Mr. Williams moved to amend by inserting in section 113, after the word "council," insert the following, — "and such additional compensation as the county commissioners shall allow."

Amendment carried.

Judge Thomas moved to amend by inserting in line 1280, after the word "trial," the following, — "such petition in error may be filed only upon leave granted by said court, or any judge thereof upon showing made."

Amendment carried.

When so amended the report was adopted, reading as follows:

3. JUDICIAL.

Section 109. (Judge of the police court). The territory now or hereafter comprised within each city is hereby constituted a municipal judicial district, and said districts shall each be known by the name of the city constituting the same. In every city district containing at the last federal census thirty thousand inhabitants or more, or which at any subsequent federal census shall contain such number, there shall be a police court, which shall be a court of record, and a police judge therefor shall be elected for a term of three years and shall serve until his successor is elected and qualified except that in city districts containing three hundred and fifty thousand inhabitants, or more, as above determined, there shall be two police judges, who shall be elected for three years and shall serve until their successors are elected and qualified. Judges of the police court shall be electors of their respective cities, and their compensation shall be fixed by council, and such additional compensation as the county commissioners shall allow. In all other cities, the mayors thereof shall be and are vested with the powers and jurisdiction of police judges, and, as such police judges, shall receive the same fees as justices of the peace in similar cases.

Section 110. "The police court shall have jurisdiction of any offense under an ordinance of the city and of any misdemeanor committed within the limits of the city, to hear and finally determine the same and to impose the prescribed penalty, but cases in which the accused is entitled to a trial by jury shall be so tried unless the jury is waived. The jurisdiction, powers

and duties of the police court in city districts shall be such as are further provided in sections 1786, 1787, 1790, 1791, 1792, 1793, 1794, 1795, 1798, 1799, 1800, 1801, 1802 and 1803 of the Revised Statutes; and such sections shall, for all purposes, be and remain in full force and effect.

Section 110a. "In felonies committed within the county, the court shall have the power of a justice of the peace to hear the case, and discharge, recognize, or commit; and if, upon such hearing, the court is of the opinion that the offense is only a misdemeanor, and the court has jurisdiction, a plea of guilty of such misdemeanor may be received, and sentence and judgment pronounced; but if in such case the accused decline to enter such plea, the court, without discharging the accused, shall cause the prosecuting attorney to file immediately in the court an information against the accused for such misdemeanor, on which charge he shall be tried in that court, after an entry has been made discharging him of the felony.

"Section 111. Council of the city comprising a police court district may provide by ordinance for the appointment of such officers, interpreters and other employes of said court as it may deem best, and fix their bonds and compensation. The judge of the police court shall appoint such persons and they shall serve for three years unless sooner removed by the judge for cause which shall be stated to council.

"Section 112. Any person convicted in the police court may, within three days thereafter, file a motion for a new trial upon the following grounds or any of them: (1). That the verdict or decision is not sustained by sufficient evidence, or is contrary to law. (2). That the court erred in the admission or rejection of evidence or in his charge to the jury. (3). Misconduct of the jury. (4). Misconduct of the prosecuting attorney. (5). Newly discovered evidence material to the party applying; and upon the overruling of the same, shall have fifteen days within which to prepare, if allowed by the court, and file a bill of exceptions, setting forth so much of the evidence and record as will exhibit the error complained of, and may thereupon file a petition in error in the court of common pleas of the county in which said police court is situated, within thirty days from the date of the overruling of said motion for a new trial; such petition in error may be filed only upon leave granted by said court, or any judge thereof, upon showing made, and the judge of the police court may suspend the sentence imposed, upon the defendant entering into a recognizance in such sum as may be approved by said court or the clerk thereof, and upon filing the petition in error the court of common pleas or a judge thereof may further sus-

pend the sentence until the hearing of said error proceedings, upon the defendant entering into a recognizance in such sum as said court of common pleas or a judge thereof shall fix, with sureties to be approved by said court of common pleas or clerk thereof.

"Section 113. (Clerk of the Police Court.) In every municipal judicial district, when the police judge is elected, there shall be a clerk of the police court, who shall be an elector of the city, and shall be elected for a term of three years. His bond and compensation shall be fixed by council, and such additional compensation as the county commissioners shall allow. The powers and duties of the clerk of the police court shall be such as are conferred and required in sections 1804, 1805, 1806, 1807, 1810, and 1811 of the Revised Statutes. Council shall determine the number of deputies, clerks and employes in the office of the clerk of the police court, and shall prescribe their duties, bonds and compensation. Such persons shall be appointed by the clerk of the police court and shall serve for three years unless removed by the clerk for cause which shall be stated to council. In all other municipal judicial districts, the mayor acting as police judge shall perform the duties of clerk.

"Section 113a. If there be any surplus of the fees collected for the city, after payment of the expenses of the police court, required to be paid by the city, such surplus shall, except as otherwise provided by law, be appropriated by council for the benefit of the common schools of the city.

Section 129: Mr. Worthington moved to amend section 129 by striking out lines 1495, 1496, 1497 and 1498.

Amendment carried.

With this amendment, section 129 was approved by the committee.

Mr. Price moved that the vote by which section 125 was adopted, be reconsidered. Motion lost.

Mr. Price then moved that the following be substituted for section 126. of the village code:

"Section 126. The council of any village in which waterworks, electric light plant, artificial or natural gas plant, or other similar utilities are situate, or in progress of construction, or when it orders waterworks, electric light plant, natural or artificial gas plant, or any other similar public utility, to be constructed, or purchases from any individual or individuals or corporation, any of the aforesaid, or similar public utility plants already constructed and existing therein, shall establish a board of three trustees, to be known as the trustees of public affairs, who shall be

appointed by the mayor and confirmed by council and shall hold their office for a term of three years; and the first appointment thereunder shall be made on the 15th day of April, 1903, and thereafter, every third year. In case of any vacancy from death, resignation or otherwise, the same shall be filled for the unexpired term in like manner as the original appointments were made.

"Said board shall organize by electing one of its number, president, and shall have authority to elect a clerk, who shall be known as the clerk of the board of trustees of public affairs. Said board shall have all the powers and perform all the duties that are provided to be performed by the trustees of water works in sections 2407, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434 and 2435 of the Revised Statutes of Ohio, and such other duties as may be prescribed by law not inconsistent herewith."

On roll-call, the motion was carried; twelve ayes, four nays.

The report of the sub-committee on health was next taken up, the report being read by Mr. Hypes.

On motion, the report is re-committed to the same sub-committee for further action.

Mr. Denman moved that the vote by which section 78 was adopted, be reconsidered by the committee. The motion was seconded and prevailed.

Mr. Denman then moved to amend section 78 by inserting in line 841, at the end of the line, the following: "Provided, however, that this shall not apply to the ordering of an election, or direction by council to any board or officer to furnish council with information as to the affairs of any department or office." Amendment carried.

When so amended, the section reads as follows:

Section 78. The action of council shall be by ordinance or resolution, and on the passage of every ordinance or resolution the vote shall be taken by "yeas" and "nays," and entered upon the journal. No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto; provided, however, that this shall not apply to the ordering of an election, or direction by council to any board or officer to furnish council with information as to the affairs of any department or office. No ordinance or resolution granting a franchise, or creating a right, or involving the expenditure of money, or the levying of any tax, or for the purchase, lease, sale, or transfer of property, shall

be passed, unless the same shall have been read on three different days, and with respect to any such ordinance or resolution, there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected thereto."

When so amended, the section was adopted.

By consent of the committee, Mr. Chapman proposed the following amendment to section 109:

Insert in line 1247, after the word "qualified," the following: "Provided, that where there is now a police court, the judge of said court shall continue to serve until the expiration of the term for which he was elected, with all the powers and duties conferred by this act." Amendment lost.

The committee then proceeded to the consideration of the merit system, as embodied in the report of the sub-committee on the merit system.

Mr. Bracken moved that the following be substituted for the amendments and sections proposed in the report of the sub-committee:

Section 141. That the council of any city in this state may by ordinance declare the necessity for the establishment and maintenance of a civil service commission; and thereupon there shall be appointed by the council a board of commissioners who shall be known as the civil service commission of such city. The members of the commission shall be elected by the city council, and shall serve one until the expiration of four years; one until the expiration of three years; one until the expiration of two years; and one until the expiration of one year from the first day of September following their election, and until their respective successors are appointed and qualified.

Such commissioners shall have been electors and residents of such cities for two years prior to their election; and in every year thereafter the council of such cities shall elect, in the month of August, one person to serve as commissioner for four years from the first day of September, and until his successor is elected and qualified.

Any vacancy in the office of commissioner shall be filled for the unexpired term by election by the city council. All elections, both original and to fill vacancies, shall be so made that not more than two commissioners shall be members of the same political party; and the original appointments shall be made so that the commissioners appointed for a term of one year and three years, respectively, shall not be members of the same political party as the commissioners appointed for a term of two years and four years, respectively.

The council may remove any commissioner for incompetency, neglect of duty, malfeasance in office, habitual drunkenness, gross immorality, or any manifest failure on the part of any commissioner to enforce the provisions of this act, but the accused shall have the right to a hearing before council, and notice of the filing of charges shall be served upon the accused not less than days before the date set for the hearing of the charges.

Section 141-1. Said commissioners shall hold no other public office or public employment. The council shall fix the compensation for the actual services necessary in the discharge of the duties of the said commissioners. Said commission shall appoint a secretary who shall perform such duties as shall be necessary to carry out the provisions of this act, and council shall fix his compensation.

Section 141-2. The commission shall classify all of the employes of the departments of fire, police, health, water-works, and engineering in the service of such cities. The commission shall also at any time classify any other office, place or appointment in any other department in the city service upon proper authorization from the council of such city; but the classified service of such city shall not include the positions of officers who are the departmental heads of such city, or stenographers thereof.

Said commission shall have power to, and shall forthwith make rules to carry out the purposes of this act and for the regulating examinations and appointments to fill any and all vacancies in the classified service of such city, in accordance with its provisions; provided no educational test shall be made for an applicant other than that actually needed for the particular position applied for.

Section 141-3. All applicants for appointment to the classified service of such city shall be subject to examination, which examination shall be competitive, public, and open to all citizens, with special limitations as to age, health, habits and moral character (said examination as to health being under the supervision of physicians). No question in any examination shall relate to political or religious opinions or affiliations.

In so far as conditions of good administration may warrant vacancies in any grade above the lowest shall be filled by promotion, and to that end public and competitive examinations shall be held open to the members of the lower grades.

Section 141-4. In case of any vacancy in the classified service, notice shall be given the commission within five days by the appointing power, and thereupon the commission shall certify in writing, to the appointing power the name, address and grade of not to exceed three candidates for such vacancy, whose names shall stand highest on the proper register, and it shall then be the duty of the appointing power to appoint on probation one of such candidates so certified. Provided, however, that if the appointing power satisfies the commission that there is reasonable ground for the belief that any candidate so certified is unfit, his name shall be stricken from the register, and another man shall be certified in its place in like manner.

No appointment, promotion, or removal in the classified service shall be influenced in any manner by the political or religious opinions or affiliations of such candidates.

Section 141-5. No officer or employe within the classified service of such city shall be removed, reduced in rank, suspended, or otherwise punished, except from some cause relating to his moral character, of his suitability to perform the duties of his office. The order of such removal, reduction in rank, suspension, or other punishment, shall be made in writing, and a copy thereof filed with the mayor. Provided, however, that any such officer or employe may appeal from such order to the civil service commission for trial, upon which appeal said commission shall require the cause of such removal, reduction in rank, suspension or other punishment, to be certified to it in writing with specifications signed by the person preferring the charge. A copy of such charges as specified shall be thereupon served on the accused at least five days before the hearing thereon, and the accused shall have the right to meet the witnesses, face to face, and have compulsory process to procure the attendance of witnesses in his behalf, and to require a speedy trial, and the production in evidence of books, papers, and records in his behalf. The said commission shall within ten days sit and investigate the charges, and shall have full power to pass upon the same, and fix the punishment of the accused.

In holding any such investigation, or inquiry, the commission shall have power to subpoena the witnesses, and the testimony of witnesses, the production of books, papers pertinent to the subject matter of such investigation, or inquiry, and to administer oaths, affirmations and witnesses and officers, to subpoena and secure the attendance of witnesses, shall be entitled to like fees and mileage as are allowed by law in like

service in proceedings before justice of the peace. Such fees shall be paid out of any money in the city treasury not otherwise appropriated, and need not be repaid, but the city auditor shall draw his warrant for the payment of the amount thereof when the same shall have been duly certified. Disobedience of any such subpoena lawfully issued and duly served, or refusal of a witness to be sworn or to answer as a witness when lawfully ordered, may be reported by the commission to the court of common pleas or to the probate court in and for the county in which the commission is sitting at the time, and may by such court be punished as a contempt in like manner as if committed on the trial of an action before such court. Subpoenas may be signed and oaths administered by any commissioner.

Section 141-6. Such commission may designate persons in the official service of the city who shall act as examiners in any examination, or it may appoint as such examiners persons not in office. The commission may themselves at any time act as such examiners, and without appointing examiners. At no examination shall all the examiners be members of the same political party. Said commission shall have a sufficient and suitable office and rooms for the fulfillment of its duties and holding examinations.

The cost and charges of salaries of the commissioners, the expense of rent and supplies, and of the administration and enforcement of this act incurred by such commission shall be borne and paid by such city out of its general fund upon vouchers of such commission, certified by that commissioner whom the commission may choose as its presiding officer, specifying in every voucher the actual service, items of supplies and process and rates in detail which shall be allowed by the city auditor, and upon his warrant paid by the city treasurer of such city.

Section 141-7. The body, board or commission in which is vested the legislative power and authority of the city school districts or of any public library of such city, may by resolution provide that any class or classes of workmen, janitors or other appointees or employees of such school district or library board shall, for the purposes of this act, be treated as a part of the classified service of such city. If the power of selection to fill the position in any such class or classes specified in such resolution be vested by law, in any officer or officers other than such legislative body, such resolution shall not take effect as to such class or classes without the approval of such officer or officers. Upon its taking effect.

all provisions of this act relating to the classified service of such city shall be applicable to the classes of employes specified in the resolution, and the power and duties of the commission of such city shall extend thereto, and the expenses of the commission incurred in connection therewith shall be paid by the board of education or library board.

Section 148-8. The commission shall have power to make rules for the examination of employes in office, but no employe shall be examined more than once in any one year. Such examination shall be for the purpose of testing his fitness to perform the duties of his position, and any employe who fails to pass such examination shall be discharged.

Mr. Williams moved that the matter of the merit system as proposed by Mr. Bracken, of Franklin, in his amendment, be indefinitely postponed. Motion seconded.

Later, with the consent of the second, Mr. Williams withdrew his motion to indefinitely postpone.

The question being on the substitute offered by the member from Franklin, a roll-call vote was demanded. The motion was lost; ayes, six; nays, thirteen.

The question recurring on the adoption of the report made by the sub-committee on the merit system, the report was adopted as amended, reading as follows:

MERIT SYSTEM OF APPOINTMENTS.

Section 141-1. (Commissioners appointed.) The governor shall appoint four persons to be merit system commissioners, who have been electors and residents of the State for five years prior to their appointment, who shall serve, one until the expiration of four years, one until the expiration of three years, one until the expiration of two years, and one until the expiration of one year from the first day of July, 1903, and until their respective successors are appointed and qualified; and in the year 1904, and in every year thereafter, the governor shall, in June thereof, in like manner appoint one person to serve as such commissioner for four years from the first day of July in the July next ensuing, and until his successor is appointed and qualified. Any vacancy in the office of commissioner shall be filled for the unexpired term by appointment as above provided. All appointments, both original and to fill vacancies, shall be so made that not more than two commissioners shall, at the time of any appointment, be members of the same political party. The governor may, also, remove any commissioner for incompetence, neglect of duty, malfeas-

ance in office, habitual drunkenness, or gross immorality; and any manifest failure on the part of any commissioner to enforce the provisions of this chapter according to its true intent and purpose shall be deemed incompetence; and when the removal of any commissioner is made, the governor shall file a written statement of the cause or causes for such removal in his office. Each commissioner shall receive a salary of two thousand dollars per annum; and each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner, to be audited by the governor and to be paid on his order. The salaries and expenses of the commission and of the officers connected therewith, shall be advanced and paid by the state out of the treasury thereof; and shall be collected by the auditor of state as other taxes are collected for state purposes from the cities of the state. All local expenses shall be borne by each city in which it is incurred. The office of said commission shall be in the state house at Columbus, Ohio.

Section 141-2. Three commissioners shall constitute a quorum. Said commissioners shall hold no other lucrative office or employment under the United States, State of Ohio, county or any municipal corporation or political division thereof, and shall, before entering upon the discharge of their duties, take the oath prescribed by the constitution of the state, and shall each give bond to the state of Ohio with security to be approved by the governor, conditioned for the faithful performance of his duties as such commissioner in the sum of two thousand dollars.

Section 141-3. (Classification.) The commission shall, without delay, organize, and shall within ninety days thereafter classify all offices and places of appointment and employment in each city in the departments of public safety, with reference to the examination hereinafter provided for. The offices, employment and places so classified by the commission shall constitute the classified service of the city and no appointment to such office, employment or places shall be made, except under and according to the rules hereinafter mentioned. Immediately upon the organization of said commission, each city officer or board, whose department is under the merit system shall furnish to said commission a list of all officers, employment and places in any way connected with his office, within said classified service, with the names of the incumbents, their compensation and the nature of their duties; and every such officer or other person in the employment of the city shall from time to

time promptly furnish the said commission in writing at their request, all other information desired by it for the proper fulfillment of its duties.

Section 141-4. (Application.) Every application, in order to entitle the applicant to appear for examination or to be examined, must state in his or her own handwriting the facts under oath, on the following subjects: (1) Full name; residence and postoffice address; (2) Citizenship; (3) Age; (4) Place of birth; (5) Health and physical capacity for the public service; (6) Previous employment in the public service; (7) Business or employment and residence for the previous five years; (8) Education; (9) Such other information shall be furnished by the applicant as may reasonably be required by the board touching the applicant's fitness for the public service.

Section 141-5. (Eligibility.) No person habitually using intoxicating beverages to excess shall be appointed to, or retained in any office, appointment or employment to which the provisions of this chapter are applicable; nor shall any vendor of intoxicating liquor be so appointed or retained. No person shall be appointed to or employed in any office to which the provisions of this chapter are applicable within one year after his conviction of any offense against the laws of this state; and if any person holding such an appointment or in any such employment shall be convicted of the violation of any such law, he shall be immediately discharged by the director or board in whose department he is serving.

Section 141-6. (Rules). Said commission shall make rules to carry out the purposes of this chapter, and for examinations, appointments, promotions and removals in accordance with its provisions. One of the said rules shall provide that any personal solicitation of any officer or member of said board, or of the appointing power, in favor of any candidate, by any person whosoever, unless fraudulently done in order to injure him, shall be taken and be deemed to have been done at the instance of the candidate himself, and shall disqualify him from competing at any examination for an appointment for and during one year thereafter. This commission may, from time to time, make changes in the original rules, and all such examinations shall, except as in this chapter otherwise provided, be by or under the direction of said commission, and all rules and all changes therein shall forthwith be printed for distribution by said commission, and the commission shall give notice of the place or places where said rules may be obtained, by publication in a newspaper published in each city or of general circulation therein, and in each such publication there shall be

specified the date, not less than ten days subsequent to the date of such publication, when said rules shall go into operation.

Section 141-7. (Examination). All applicants for offices or places, or for employment in such classified service shall be subjected to examination, which shall be public, competitive and free to all citizens of the United States, with specified limitations as to residence, age, health, habits and moral character; provided, that no educational test shall be made for an applicant other than that actually needed for the particular position he applies for. Such examinations shall be practical in their character and shall relate to those matters which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to be appointed, and may include tests of physical qualifications and health, and when appropriate, of manual skill. No question in any examination shall relate to political or religious opinions or affiliations. The commission shall control all examinations and whenever an examination is to take place, may designate four persons, residents of such city, to be examiners, no more than two of whom shall belong to the same political party, and it shall be the duty of such examiners to conduct such examinations as the commissioners may direct, and to make return or report thereof to the commission and the commission may at any time remove any member of said local examining board; or the commissioners may themselves act as such commissioners.

Section 141-8. (Notice of Examinations). Notice of the time and place and general scope of every examination, shall be given by the commission or local examining board, by publication once each week for two weeks preceding such examination, in at least two daily newspapers of different politics published in such city or of general circulation therein, and such notice shall also be posted by said commission in a conspicuous place in the office of the clerk of the city council, two weeks before such examination. Such further notice of examinations may be given as the commission shall prescribe.

Section 141-9. (Registers). From the returns or reports of the examiners, or from the examinations made by the commission, the commission shall prepare a register for each grade, or class of positions in the classified service of each city of the persons whose general average standing upon examination for such grade or class is not less than the minimum fixed by the rules of such commission, and who are otherwise eligible; and such persons shall take rank upon the register as candidates in the

order of their relative excellence as determined by examination, without reference to priority of the time of examination.

Section 141-10. (Promotions). The commission shall, by its rules, provide for promotions in such classified service, on the basis of ascertained merit and seniority in service and examination, and shall provide in all cases where it is practicable, that vacancies shall be filled by promotion. Examinations for promotion may be either competitive or non-competitive, as the commission may determine, among members of the next lower rank, and it shall be the duty of the commission to submit to the appointing power the names of not more than three applicants having the highest rating for each promotion. The method of examination, and the rules governing the same and the method of certifying, shall be the same as provided for applicants for original appointment, or such examinations may be non-competitive as provided by this section.

Section 141-11. (Appointment to classified service). The head of the department or office in which the position classified under this chapter is to be filled, or officer whose duties include the appointment of subordinates, shall notify said commission of that fact, and said commission shall certify to the appointing officer the names and addresses of the three candidates standing highest upon the register for the class or grade to which said position belongs. The appointing officer shall notify said commission of each position to be filled, separately, and shall fill such place by appointment of one of the persons certified to him by said commission therefor, which appointment shall be on probation for a period to be fixed by said rules. Such commission may strike off names of candidates from the register after they have remained thereon for more than two years. At or before the expiration of the period of probation, the head of the department or office in which a candidate is employed may, by and with the consent of said commission, discharge him, upon giving in writing his reason to said commission therefor. If he is not then discharged, his appointment shall be deemed complete. To prevent the stoppage of public business, or to meet extraordinary exigencies, the head of the department or office may, except as otherwise provided in this act, with the approval of the commission, make temporary appointments to remain in force not exceeding ten days, or only until regular appointments under the provisions of this chapter can be made.

Section 141-12. (Removals). No officer or employe in the classified service of any city, shall be removed or discharged except for cause; removal of clerks of the city treasurer shall be made by such

treasurer, clerks of the police clerk by such police clerk; officers, clerks and employes serving in any departments of the city, included within the merit system, by the heads of the department respectively, and all other officers and employes, as provided within this act, and the cause of removal of any person included within the merit system, shall be forthwith stated in writing by the officer making the same, and shall be filed with the commissioners at their office and shall be open to public inspection. No officer, secretary, clerk, surgeon, patrolman, fireman or other employe now serving in the police or fire departments of any city in the shall be removed or reduced in rank or pay except in accordance with the provisions of this act.

Section 141-13. (Reports to the Commission.) Immediate notice in writing shall be given by the appointing power, to said commission, of all appointments, permanent or temporary, made in such classified service, and all transfers, promotions, resignations or vacancies from any cause in such service, and of the date thereof; and a record of the same shall be kept by said commission. When any office or place of employment is created or abolished, or the compensation attached thereto altered, the officer or board making such change shall immediately report in writing to said commission.

Section 141-14. (Investigation.) The commission or anyone appointed by it, shall investigate the enforcement of this chapter and of its rules, and the action of the examiners herein provided for, and the conduct and action of the appointees in the classified service in each city, and may inquire as to the nature, tenure and compensation of all offices and places in the public service thereof. In the course of such investigation each commissioner or such appointee shall have power to administer oaths, and said commission or appointee shall have power to secure by its subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to such investigation. Such subpoena shall be served by any officer authorized to serve civil process.

Section 141-15. (Report by commission.) Said commission shall, on the first day of April of each year, make to the governor a report showing its action, the rules in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this chapter. The governor may require a report from said commission at any other time.

Section 141-16. (Chief examiner.) Said commission shall employ a chief examiner, whose duty it shall be, under the direction of the com-

mission, to superintend all examinations held in each city under this chapter, and who shall perform such other duties as the commission shall prescribe; and may also employ a clerk and a stenographer, at a salary not exceeding one thousand dollars per year for each. The chief examiner shall be ex-officio secretary of said commission, under the direction of such commission.

Section 141-17. (Officers to aid — rooms.) All officers of each city shall aid said commission in all proper ways in carrying out the provisions of this chapter, and the city council shall cause suitable rooms to be provided for the use of said commission at the expense of said city.

Section 141-18. (Duties of secretary.) The secretary of the commission shall keep the minutes of its proceedings, preserve all reports made to it, keep a record of all examinations held under its direction, and perform such other duties as the commission shall prescribe.

Section 141-19. (Salaries and expenses.) The chief examiner shall receive a salary of three thousand dollars a year and shall be paid his necessary traveling expenses incurred in the discharge of his official duties. Any person serving as an examiner, or as a member of the board of examiners shall receive compensation for every day actually and necessarily spent in the discharge of his duty as an examiner at the rate of not to exceed five dollars a day, to be fixed by the commission. A sufficient sum of money shall be appropriated each year by the council of each city, to carry out the provisions of this chapter in such city, and the city council shall make the necessary levy therefor.

Section 141-20. (Frauds prohibited.) No person or officer shall wilfully or corruptly by himself or in co-operation with one or more persons, defeat, deceive or obstruct any person in respect to his right to examination, or falsely or corruptly mark, grade or estimate or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or wilfully or corruptly make any false representation concerning the same, or concerning the person examined, or wilfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined or to be examined, being appointed, employed or promoted, or wilfully personate any other person, or permit or aid in any manner any other person to personate him, in connection with any examination or registration or application, or request to be examined or registered, or who shall make known or assist in making known to any applicant for examination in advance of such examination,

any question to be asked on such examination, shall for each offense be deemed guilty of a misdemeanor.

Section 141-21. (Payment for places prohibited.) No applicant for appointment in said classified service either directly or indirectly, shall pay or promise to pay any money or other valuable thing to any person whomsoever for or on account of his appointment, or proposed appointment, and no officer or employe shall pay or promise to pay, either directly or indirectly, to any person any money or valuable thing whatsoever for or on account of his promotion.

Section 141-22. (Recommendation in consideration of Political Service Prohibited.) No applicants for appointment or promotion in said classified service, shall ask for or receive, a recommendation or assistance from any officer or employe in said service, or from any person, upon the consideration of any political service rendered or to be rendered to or for any such person, or for the promotion of such person to any office or appointment.

Section 141-23. (No officer to solicit or receive political contributions.) No officer or employe in the classified service of any city shall solicit, orally or by letter, or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any party or political purpose whatsoever.

Section 141-24. (No person to solicit political contributions from officers or employes.) No person shall solicit, orally, or by letter, or be in any manner concerned in soliciting any assessment contribution or payment, for any party or any political purpose whatsoever, from any officer or employe in the classified service in any department of the city government of any city.

Section 141-25. (Assessments and contributions in public offices forbidden.) No person shall in any room or building occupied for the discharge of official duties by any officer or employe in the classified service of any city, solicit, orally or by written communication, delivered therein, or in any other manner, or receive any contribution of money or other thing of value, for any party or political purpose whatsoever. No officer, agent, clerk or employe under the government of such city, who may have charge or control of any building, office or room, occupied for any purpose of said government, shall permit any person to enter the same for the purpose of therein soliciting or delivering written solicitations for receiving or giving notice of any political assessments.

Section 141-26. (Payment of political assessments to public officers prohibited.) No officer or employe in the classified service of any city shall, directly or indirectly, give or hand over to any officer or employe in said service, or to any senator or representative or councilman any money or other valuable thing, on account of or to be applied to the promotion of any party or political object whatever.

Section 141-27. (Abuse of official influence prohibited.) No officer or employe in the classified service of any city shall discharge or degrade or promote, or in any manner change the official rank or compensation of any officer or employe, or promise or threaten to do so for giving or withholding or neglecting to make any contributions of money or other valuable thing for any party or political purpose, or for refusal or neglect to render any party or political service.

Section 141-28. (Abuse of political influence prohibited.) No person while holding any office in the classified service in the government of any city, or in nomination for, or while seeking a nomination for, or appointment to any such office, shall corruptly use or promise to use, either directly or indirectly, any official authority or influence (whether then possessed or merely anticipated) in the way of conferring upon any person, or in order to secure or aid any person in securing any office or public employment, or any nomination, confirmation, promotion or increase of salary upon the consideration or condition that the vote or political influence or action of the last named person or any other shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt condition or consideration.

Section 141-29. (City clerk, etc.) No city clerk, auditor or accounting officer of any city shall allow the claim of any public officer for services of any deputy or other person employed in the classified service in violation of the provisions of this chapter.

Section 141-30. (Appointments and removals to be certified.) The commission shall certify to the auditor all appointments to offices and places in the classified service of each city, and all vacancies occurring therein, whether by dismissal, removal, resignation or death.

Section 141-31. (Payment of salaries, etc.) No city clerk, auditor or accounting officer of any city shall approve the payment of, or be in any manner concerned in paying any salary or wages to any person for services as an officer or employe of any city, unless such person is occupying an office or place of employment according to the provisions of law and is entitled to payment therefor. No treasurer or

other officer or agent of any city shall wilfully pay, or be in any manner concerned in paying to any person any salary or wages for services as an officer or employe of any city, unless such person is occupying an office or place of employment as according to the provisions of law and is entitled to payment therefor; and no payment made in violation hereof shall be allowed to such treasurer or paying officer in his accounts with the city.

Section 141-32. (Compelling testimony of witnesses, production of books, etc.) Any person who shall be served with a subpoena to appear and testify, or to produce books and papers, issued by the commission or by any commissioner, or by any person appointed by or acting under the orders of the commission, in the course of an investigation conducted under the provisions of Section 141-14 of this chapter, and who shall refuse or neglect to appear or to testify, or to produce books and papers relevant to said investigation, as commanded in such subpoena, shall be guilty of a misdemeanor and shall on conviction be punished as provided in section 141-33. The fees for witnesses for attendance and travel shall be the same as the fees of witnesses before the common pleas court of this state, which fees and the fees of the officer serving such witnesses shall be paid from the appropriation for the expenses of the commission. Any common pleas court of this state, or any judge thereof, either in term time, or vacation, upon application of any such commission or appointee, may in his discretion compel the attendance of witnesses, the production of books and papers, and giving of testimony before the commission, or before any such appointee, investigating board or officer, by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before said court. Every person who, having taken an oath or made affirmation before a commissioner or officer appointed by the commission authorized to administer oaths, shall swear or affirm wilfully, corruptly and falsely, shall be guilty of perjury, and upon conviction, shall be punished accordingly.

Section 141-33. (Penalties.) Any person who shall wilfully or through culpable negligence violate any of the provisions of this chapter, or any rule promulgated in accordance with the provisions thereof, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not less than fifty dollars, and not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding

six months, or both such fine and imprisonment in the discretion of the court.

Section 141-34. (Penalties. Disqualification to hold office.) If any person shall be convicted under the next preceding section, any public office or place of public employment which said person may hold, shall, by force of such conviction be rendered vacant, and such person shall be incapable of holding any office or place of public employment in the classified service for the period of five years from the date of such conviction.

Section 141-35. (What officers to prosecute.) Prosecutions for violations of this act may be instituted either by the attorney general of the state, the prosecuting attorney for the county in which the offense is alleged to have been committed, or by the commission acting through special counsel employed by it. Such suits shall be conducted and controlled by the prosecuting officers, who institute them, unless they request the aid of other prosecuting officers.

Section 141-36. The council of any city shall have the power by ordinance, to include the employes of any municipal department under the provisions of Sections 141-1 to 141-35, inclusive, and when such employes are so included, they cannot thereafter be excepted by any municipal authority or agency; and provided further, that if at any time forty per cent of the electors of any municipality shall, by petition, request the council to submit the question of extending the merit system to the employes of any, or all, departments of the municipal government, the council shall, by resolution, provide for submitting such question at the next general municipal election, if the majority of the votes cast for such purpose be in favor of such extension, from and after the date of such election, all of such employes shall be included under the provisions of Sections 141-1 to 141-37, inclusive, and shall not thereafter be excepted from such provisions by municipal authority or agency.

Section 141-37. Any person in the classified service of any city who shall be removed from his position of appointment or employment, shall have the right to appeal from the decision of the officer or board causing such removal, to the commission, within ten days from and after the date of his removal; provided, however, that said commission shall have the right to require such person, before bringing such appeal, to give bond for the payment of the costs of such appeal in such amount as it may deem necessary, and with sureties to its approval, and said appeal

shall be heard by said commission within ten days from and after the date of the giving of such said bond.

Judge Thomas moved, that in the organization of cities, the vote relating to civil service in cities, and adopting the merit system for cities, be re-considered, stating that he wished to offer an amendment whereby civil service would be excluded from the departments in cities of a population of 18,000 or under.

Mr. Guerin seconded the motion.

Motion carried.

On motion, the matter of the merit system, with reference to the department of public safety, is re-referred to the same sub-committee on the merit system.

On motion, the Committee adjourned to 9:30 A. M. Wednesday, September 24th, 1902.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

Wednesday, September 24, 1902, 9:00 A. M.

The committee met pursuant to adjournment, Mr. Willis presiding in the absence of the chairman. The roll call showed all the members present with the exception of Chairman Comings and Mr. Gear.

Mr. Painter, on behalf of the sub-committee appointed to consider the waterworks question, submitted a new section to take the place of section 134 in House Bill No. 5, and on motion the report of the committee was adopted.

As amended and changed, section 134 now reads:

Section 134. Nothing in this act shall be construed to alter, repeal or amend an act entitled, "An act to create a board of supervision in the erection simultaneously of public, municipal and county buildings," passed May 6, 1902, or sections 2435-1, 2435-2, 2435-3, 2435-4, 2435-5, 2435-6, 2435-7, 2435-9, 2435-10, 2435-11, 2435-12, 2435-13, 2435-14, 2435-15, 2435-16, 2435-17 and 2435-18 of the Revised Statutes, nor any other acts or parts of acts authorizing public improvements or the enlargement or extension of waterworks, in any municipality by a board of waterworks trustees heretofore established by law, having authority to make enlargements and extensions of waterworks and having such enlargements and extensions in progress of construction; but in all such cases said boards of supervision in the erection simultaneously of public, municipal and county buildings, of commissioners of waterworks and boards of waterworks trustees shall continue in office and perform all of the functions and duties and exercise all of the powers now possessed by them until the completion of such improvements in progress of construction, and thereupon the works so completed shall be turned over to the appropriate authority of the municipality.

On motion of Mr. Stage, the following section was adopted as section 134a:

Section 134a. Whenever any city, or the county in which any city is located, contemplates the erection of buildings for public, municipal or county purposes within the boundaries of such city, the council may pro-

vide by ordinance for the employment of three persons to be named by the mayor, of whom at least two shall be architects, the members of which board shall be employed for a term, at a salary not exceeding five thousand dollars (\$5,000.00) per annum each, to be fixed by the ordinance providing for the employment of such persons, which compensation shall be paid by the city from the general fund.

Such persons shall have the supervision and control of the location of all public, municipal or county buildings to be erected upon ground acquired within the limits of the city, and shall have control of the size, height, style and general appearance of all such buildings for the purpose of procuring in their location and erection the greatest degree of usefulness, safety and beauty.

All plans and specifications for the erection of public, municipal or county buildings within the boundaries of such city, shall be submitted to, and require approval of, a majority of such persons before they are adopted by the authorities engaged in the construction thereof.

Any persons heretofore appointed by whatever authority for the purposes provided herein shall continue in the performance of their duties for the term of their original employment, with the powers herein granted, and no others, unless otherwise removed by the mayor of such city for cause.

Mr. Stage also introduced a new section to be known as section 134b, and on motion this was referred to a sub-committee appointed by the chairman, consisting of Messrs. Stage, as chairman, Thomas and Painter.

With the consent of the committee, Mr. Stage also referred section 134c to the sub-committee just appointed.

Mr. Guerin moved the following be added to House Bill No. 5 as section 23a, and the motion was adopted:

Section 23a. The city council of each city shall have power to levy and collect a tax not exceeding one mill on each dollar of the taxable property of the municipality, annually, and to pay the same to a private corporation or association maintaining and furnishing a free public hospital for the benefit of the inhabitants of the municipality, as and for compensation for the use and maintenance of the same and without change or interference in the organization of such corporation or association, requiring the treasurer of such corporation or association to make an annual financial report, setting forth all the money and property which has come

into its hands during the preceding year and its disposition of the same, together with any recommendation as to its future necessities.

Mr. Hypes, on behalf of the sub-committee on parks, introduced an addition to section 135, which was referred back to the committee, and the committee was continued so that it might consult with the members from Cuyahoga county.

Mr. Bracken, on behalf of the sub-committee to which the matter had previously been referred, reported in favor of the addition of the following to section 87, which was agreed to:

A roll call was demanded, and on a division the motion prevailed, ayes 14, nays 5.

Provided, however that in the event the council shall by a three-fourths vote of all the members elected thereto, authorize the director of public works to purchase supplies and materials under section 2303 for the use and construction of any public improvement, he may also when authorized by a three-fourths vote of all the members elected to council, make contracts with or without competitive bidding for the work and labor in the construction of the improvement.

Mr. Hypes, on behalf of the sub-committee on tax commission, reported in favor of the addition to the Nash code, House Bill No. 5, of sections 47b, 47c, 47d and 47e, which sections, with amendments adopted by the committee, were finally approved and now read as follows:

TAX COMMISSION.

Section 47b. In each city there shall be a board of tax commissioners, which shall also constitute the board of sinking fund trustees, as provided in section 59 of this act, to consist of four citizens of such city who shall be electors of said city, well known for their intelligence and integrity, to be appointed by the mayor, one for four years, one for three years, one for two years, and one for one year, and their successors shall be appointed for four years from the expiration of their respective terms. Such appointments shall be so distributed that not more than two members of the whole board shall belong to the same political party, but nothing herein shall prevent the appointment of persons who act independently of political organizations, it being the object and intent of this provision to make and continue said commission as nearly as may be non-partizan in its political character. In case of any vacancy by death, resignation, removal from the city or otherwise, of either of such commissioners, the same

shall be filled by appointment by the mayor for the unexpired portion of such term.

Section 47c. The members of said board of tax commissioners shall not receive any compensation for their services.

Section 47d. The members of said board of tax commissioners shall each take an oath to support the constitution of the United States and of the state of Ohio, and to faithfully and honestly perform their duties as such tax commissioners. Said board shall organize by appointing one of its members president, another vice-president; a majority of the members thereof shall constitute a quorum for the transaction of business. The board shall keep a full record of all its proceedings, and the city auditor shall be clerk of said board, and shall receive no additional salary or compensation for services as clerk of said board, and shall enter in a book to be provided by the city for that purpose, a full and detailed statement of all its proceedings which shall be signed by the president or vice-president and said clerk.

Section 47e. The board of tax commissioners, upon receipt of the levies made by the council or the board of education, as provided by law, shall consider the same, and within ten days after such receipt shall return the same to the council and board of education respectively as the case may be, with their approval or rejection, in case of rejection giving their reasons therefor. They may approve or reject any part or parts thereof, and the parts rejected by said board shall not become valid levies unless the council or board of education of such municipality shall thereafter, by a three-fourths vote of all members elected thereto, adopt such levy or part thereof so rejected by said commission. If the board of tax commissioners approve said levies, or if they neglect to return the same with their approval or rejection within ten days as aforesaid, the same shall be valid and legal.

On motion of Mr. Guerin, section 42 was amended by adding at the end thereof the words: Together with such suggestions and recommendations as it may deem proper.

Section 42 was also amended, on motion of Mr. Stage, by inserting after the word "determine" in line 3 the words "by ordinance."

On motion of Mr. Hypes, the words "in section 47 of this act" were stricken out of section 42 in lines 7 and 9. As amended the section now reads:

Section 42. The council shall examine and revise the statements submitted by the mayor as provided in section 85d of this act, and after

it shall have determined by ordinance the percentage to be levied for the several purposes allowed by law upon the real and personal property in the corporation returned on the grand duplicate the same shall be submitted by the council to the board of tax commissioners hereinafter provided, which board of tax commissioners shall examine and return same to the council within ten days, as provided by law, together with such suggestions and recommendations as it may deem proper.

Mr. Silberberg moved that section 135 be amended as follows :

In line 1545, after the word "by" insert "municipal." Adopted.

In line 1550, strike out "five" and insert "nine." Adopted.

In line 1551, strike out all after the word "by" and strike out all of lines 1552 and 1553, and insert in lieu thereof the following: "The court of common pleas of the judicial district in which said municipal corporation is situated, three for a term of two years, three for a term of four years and three for a term of six years; and thereafter as the terms expire the court of common pleas of the judicial district."

Mr. Denman moved to amend by striking out of Mr. Silberberg's motion the words "The court of common pleas of the judicial district in which said municipal corporation is situated" and the words "the court of common pleas of the judicial district" and to insert in lieu thereof the words: "the mayor."

On a roll call Mr. Denman's amendment prevailed, ayes 9, nays 8.

On motion of Mr. Silberberg the section was further amended by striking out the period in line 1561 and inserting the following: "and sections 4095, 4096, 4097, 4099, 4100, 4101, 4102, 4103 and 4104 as amended May 12, 1902, shall remain in full force and effect."

As amended section 135 now reads:

Section 135. In any municipal corporation having a university supported in whole or in part by municipal taxation all the authority, powers and control vested in or belonging to said corporation with respect to the management of the estate, property and funds given, transferred, covenanted or pledged to said corporation in trust or otherwise for such university, as well as the government, conduct and control of such university shall be vested in and exercised by a board of directors consisting of nine electors of said municipal corporation, who shall be appointed by the mayor thereof, three for a term of two years, three for a term of four years and three for a term of six years; and thereafter as the terms expire the mayor shall appoint three directors for a term of six years each, and shall fill all vacancies in said board. Such board of directors shall be known as "The

Board of Directors of ——— University" (filling out blank with the name of the university). They shall serve without compensation and shall have all the powers and perform all the duties now and hereafter conferred or required by law in the government of said university, and the execution of any trust with respect thereto imposed upon the municipal corporation and all acts or parts of acts not inconsistent herewith which govern such university shall be and remain in full force and effect and sections 4095, 4096, 4097, 4099, 4100, 4101, 4102, 4103 and 4104 as amended may 12, 1902, shall remain in full force and effect.

The committee then adjourned until 2:00 p. m.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

WEDNESDAY, September 24, 1902, 2:00 o'clock P. M.

Pursuant to recess, the Special Committee for the consideration of municipal codes met in the Finance Committee room, Mr. Willis presiding.

On roll-call the following members were present:

Painter,	Denman,
Guerin,	Hypes,
Price,	Willis,
Cole,	Stage,
Williams,	Bracken,
Metzger,	Ainsworth,
Thomas,	Maag,
Chapman,	Huffman,
Allen,	Brumbaugh,
Silberberg,	Sharp.
Worthington,	

The report of the Sub-committee on Franchises was submitted, but on motion, the hearing of the same was postponed to Thursday morning, September 25th.

The committee entered upon the consideration of the report of the sub-committee on health department, as presented by Mr. Hypes.

On motion, the report was adopted, reading as follows:

Section 108a. The council of each city and village shall establish a board of health; such board shall be composed of five members to be appointed by the mayor and confirmed by council, who shall serve without compensation, and a majority of whom shall constitute a quorum; and the mayor shall be president by virtue of his office. In villages the council may appoint a health officer instead of a board of health, and fix his salary and term of office, such appointee to be approved by the state board of health, who shall have all the powers and perform all the duties granted to or imposed upon boards of health, except that all rules,

regulations or orders of a general character and required to be published, made by such health officer, shall be approved by the state board of health. And if any city, village or township fails or refuses to establish a board of health or appoint a health officer, the state board of health may appoint a health officer for such city, village or township and fix his salary and term of office, and such health officer shall have the same powers and duties as health officers appointed in villages in lieu of a board of health, as herein provided, and the salary of such health officer, as fixed by the state board of health, and all necessary expenses incurred by him in performing the duties of a board of health shall be paid by and be a valid claim against the city, village or township for which such health officer is appointed to serve.

Section 108*b*. The state board of health, or the board of health of any city, village or township, in time of epidemic or threatened epidemic, or when any dangerous communicable disease is unusually prevalent, may, after a personal investigation by the members of such board to establish the facts in the case, and not otherwise, impose a quarantine on vessels, railroads, stages, or any other public or private vehicle conveying persons, baggage or freight, or used for such purpose, and may make and enforce such rules and regulations as such board may deem wise and necessary for the protection of the health of the people of the community or state; provided, however, that the running of any train or of any cars on any steam or electric railroad, or of steamboats, vessels, or other public conveyances shall not be prohibited. A true copy of such quarantine rules and regulations adopted by a local board of health, shall be immediately furnished by such board to the state board of health. Such quarantine rules and regulations, when established by a local board of health, after careful investigation by the state board of health, may be altered, relaxed or abolished by order of said state board and thereafter no change shall be made except by the order of the state board of health, or by the local board, to meet some new and sudden emergency.

Section 108*c*. The board of health herein provided for shall have all the powers and perform all the duties, not inconsistent with this act, which are conferred or required in sections 2113, 2133, as amended May 7, 1902, (95 O. L. 421), 2115, 2116, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, and 2148, of the Revised Statutes, as amended May 7, 1902, (O. L. 421), and sec-

tion 2114, of the Revised Statutes, as amended May 12, 1902, (95 O. L. 643), and for all purposes such sections as amended shall be and remain in full force and effect; and nothing herein contained shall be held to impair, restrict or repeal any portion of the act passed April 23, 1902, entitled, "An act authorizing the levy of taxes in municipalities to provide for firemen's, police and sanitary police pension or relief funds, and to create and perpetuate boards of trustees for the administration of such funds;" provided, further, that local boards of health shall not have power to close public highways or prohibit travel thereon, nor to interfere with public officers not afflicted with or directly exposed to a contagious or infectious disease, in the discharge of their official duties; nor to establish a quarantine of one city, village or township against another city, village or township, as such, without permission first obtained from the state board of health, and under such regulations as may be established by the state board.

Mr. Stage moved to amend section 134, by adding the following subsection:

Section 134*b*. The council of any city may provide by ordinance for the appointment of a market house commission to consist of three members, all of whom shall be nominated by the mayor of such city and approved by the council, and who shall serve for a period of five years, and until their successors are appointed and qualified, and shall receive their necessary expenses in attending to their duties, which shall be paid out of the fund created for carrying out the provisions of this act. The members so appointed cannot be removed, unless for cause, and shall give bond in the sum of five thousand dollars each, to the approval of the mayor of such city, for the faithful performance of their duties. Such commission shall have power to contract for and supervise the building and furnishing of any market house, or houses, or public hall in connection therewith for such city, for which the council may, by ordinance, provide and to acquire any lands that may be necessary for such purpose, either by purchase or appropriation, in the name of such city, in the manner now provided by law; provided, that no such contracts for the purchase of land shall be effective until approved by the council of such city, and such approval endorsed thereon, and no land shall be acquired by purchase or appropriation, except in such location and upon such terms as are authorized by the council of any such city. The council shall have power to provide for the appointment by said commission of a secretary and other necessary employes, fix their compensation

and said commission may, with the approval of the mayor, adopt suitable plans and designs for erecting completing and furnishing such market house, or houses, or public hall in connection therewith, in any such city.

Any such commission now in existence however appointed, shall continue for the remainder of the period for which they were so appointed, and have the powers in this section provided, but no others. And all bonds and securities issued for any of the purposes herein contained shall be issued in pursuance of existing law. All rent obtained by said city from any market house, or houses, or any public hall connected therewith shall be placed in a sinking fund of such city, and shall be applicable to the payment of the principal and interest of any bonds heretofore or hereafter issued for the payment of constructing such market house, or house, and public hall in connection therewith.

On motion, the subsection, as above read was adopted by the Committee.

Mr. Stage moved to amend section 134 further, by adding the following sub-section.

Section 134c. Any city contemplating the erection and furnishing of a city hall, may by ordinance of its council provide for the appointment of a board of commissioners, composed of five citizens of said city, to be appointed by the mayor, not more than three of whom shall be from the same political party, who shall have supervision of procuring the necessary land, and the construction and furnishing of such contemplated building. Such commissioners shall have power, subject to the approval of the mayor of such city, to purchase in the name of the city land for city hall purposes, and if in their judgment it becomes necessary to acquire the same by appropriation, they shall certify such fact to the said council, and such council may thereupon appropriate such land in the manner provided by law for the appropriation of property for municipal purposes. Such commissioners shall have power to contract with architects, approve plans and specifications, and make all contracts necessary for the construction and furnishing of such city hall, but all such contracts shall be in the name of the city, and shall be made after advertisement and bidding as provided by law as to other municipal contracts, and shall have the written approval of the mayor before becoming effective. Said commissioners shall serve until the work for which they were appointed is either completed or abandoned by the city, unless removed by the mayor for cause, and any vacancy in such board may be

filed by the mayor. Such commissioners shall select from their number a president, and may appoint a clerk and such other employes as may be necessary, and fix their compensation, and shall keep a full record of their proceedings. Such commissioners shall each receive the sum of five dollars per meeting, as compensation, for each and every meeting attended by them, which compensation, however, shall in no case exceed twelve hundred dollars in any one year to any one person. The compensation and the expenses of such board shall be deemed a part of the cost of such city hall, to be paid by such city in like manner as the remaining cost thereof. In any city which has heretofore determined upon the erection of a city hall, for which a board of city hall commissioners has in any manner been created or appointed, such board shall continue, with the powers specified hereunder, but no others, until the construction and furnishing of such city hall has been completed or abandoned by such city, and any funds remaining from the sale of bonds shall be used toward the purchase of a site, and the construction and furnishing of such city hall, and all bonds and securities issued for any of the purposes herein contained shall be issued in pursuance of existing law. No payments shall be made by such city from such fund except upon the order of such board of commissioners. For the purpose of paying the interest on said bonds and for the further purpose of providing a fund for the payment of such bonds at maturity, the council of any city may use and apply any money received from any gas company or electric light company under any agreement heretofore or hereafter made; and for the purpose of providing such further sum as may be necessary to pay the interest on such bonds and the principal of the same at maturity, the council shall, in addition to the other levies authorized by law, levy annually a sufficient tax therefor on all property of any city subject to taxation, and such taxes shall be levied and collected as other taxes.

On motion, the sub-section as above read was adopted by the committee.

Mr. Denman moved to amend section 90, by striking out lines 1024 to 1035, inclusive, and insert in lieu thereof the following:

"In every municipal judicial district where a police judge is elected for the police court there shall be a prosecuting attorney of the police court who shall be an elector of the district and shall be elected by the electors thereof for a term of three years, and serve until his successor is elected and qualified. Council shall provide for such number of

assistant prosecutors to the prosecutor of the police court as shall be necessary, and such assistants shall be electors of the district and shall be appointed by the prosecutor, and shall serve during the term of the prosecutor unless sooner removed by him. The prosecutor and his assistants, if any, shall be attorneys regularly admitted to practice law in Ohio. The council shall fix the compensation of the prosecutor and his assistants and the prosecutor may receive such additional compensation as the county commissioners may allow. The duties of the prosecuting attorney of the police court shall be such as are provided in section 1813 of the Revised Statutes, such as are provided in this act and all other acts or parts of acts applying to all cities of the state and not inconsistent herewith. In case of the inability or absence of the prosecutor or any of his assistants to act as prosecuting attorney of the police court, the provisions of section 1815 of the Revised Statutes shall apply."

On motion, the amendment is adopted.

Section 58: Mr. Hypes moved to amend by striking out in line 666, the words "municipal corporations," and insert in lieu thereof the word "cities."

Amendment carried. When so amended the section was approved.

Section 59: Mr. Hypes moved to amend by striking out in line 673 the words "municipal corporations" and insert in lieu thereof the word "cities."

Amendment carried.

Mr. Hypes moved to amend by inserting in line 675, after the word "thereof," the words, "which shall also be the tax commission as provided in Section 47 of this act."

Amendment carried.

Mr. Hypes moved to amend by striking out lines 677, 678, 678 and 680 to the period.

Amendment carried.

When so amended the section was approved, reading as follows:

Section 59. In all cities the sinking fund shall be managed and controlled by a board designated as the trustees of the sinking fund, which in cities shall be composed of four citizens thereof, which shall also be the tax commission as provided in Section 47 of this act, not more than two of whom shall belong to the same political party, and who shall be appointed by the mayor. In villages the trustees of the sinking fund shall be the mayor, clerk and chairman of the finance committee of council.

Section 60: Mr. Hypes moved to amend by striking out lines 685 and 686, and substituting in lieu thereof the following: "and the costs thereof, together with all other incidental and necessary expenses of the trustees of the sinking fund, shall be paid by said trustees out of funds under their control."

Amendment adopted. When so amended, the section was approved by the committee, reading as follows:

Section 60. The trustees of the sinking fund shall serve without compensation and shall give such bond as council may require; provided, that any surety company duly authorized to sign such bonds shall be sufficient security, and the costs thereof, together with all other incidental and necessary expenses of the trustees of the sinking fund, shall be paid by said trustees out of funds under their control.

Section 61: On motion, this section is approved.

Section 62: On motion, this section is approved.

Section 63: On motion, this section is approved.

Section 64: On motion, this section is approved.

Section 65. Mr. Stage moved to amend by striking out the word "final" in line 715, after the word "judgments," and inserting the word "final" before the word "judgments."

Amendment carried.

Section 66: Mr. Hypes moved to amend by inserting in line 724, after the word "state," the following, "holding in reserve only such sums as may be needed for effecting the prompt discharge of matured obligations and current items of expense."

When so amended, the section was adopted, reading as follows:

Section 66: The trustees of the sinking fund shall invest all moneys received by them in bonds of the United States, the state of Ohio, or of any municipal corporation in said state, hold in reserve only such sums as may be needed for effecting the terms of this act, and all interest received by them shall be reinvested in like manner.

Section 67. On motion, this section is approved.

Section 68. Mr. Hypes moved to amend by inserting in line 732, after the word "with," the words "the treasurer of the corporation or with." Amendment carried.

Mr. Hypes moved to amend by inserting in line 733, after the word "be," the words, "indicated or." Amendment carried.

Mr. Stage moved to amend in line 735, by striking out the word "a" and inserting in lieu thereof the word "the." Also, in line 736, strike out the word "a" and insert the word "the."

Amendment carried.

When so amended, the section was adopted, reading as follows:

Section 68. Money shall be drawn by check only, signed by the president, and at least two members of the board, and attested by the secretary or clerk. All securities or evidences of debt held by the trustees for the corporation shall be deposited with the treasurer of the corporation or with a safety deposit company or companies within the corporation, or if none exists, then in a place of safety to be indicated or furnished by council, and when so deposited they shall be drawn only upon the written application of three members and in the presence of at least two members of the city board, or upon the written application and in the presence of at least two members of the village board.

Section 69: On motion this section is adopted.

Section 70: Mr. Allen moved to amend by striking out the word "fifty" in line 748, and inserting in lieu thereof the word "twenty."

Amendment carried.

When so amended the section was approved.

Section 71. On motion, is referred to a sub-committee composed of Messrs. Stage and Metzger.

On motion, the committee recessed to meet at 7:30 P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

Columbus, Ohio, September 24, 1902, 2 :00 o'clock P. M.

Pursuant to recess the special committee met in the finance committee room. On roll call the following members were present :

Painter,	Denman,
Guerin,	Hypes,
Price,	Willis,
Cole,	Stage,
Williams,	Bracken,
Metzger,	Ainsworth,
Thomas,	Maag,
Chapman,	Huffman.
Allen,	Brumbaugh,
Silberberg,	Sharp.
Worthington,	

Mr. Cole was recognized by the chairman and spoke as follows on the subject of the report of the sub-committee on franchises :

Mr. Cole: Mr. Chairman: The subject of franchises is a big one, one that I think could well be submitted to a committee appointed for that particular purpose, a committee of men noted for their intelligence and integrity, to make a thorough investigation of the subject, and perhaps report to some future Assembly. But as for taking action and enacting a law upon franchises at the present time, I would consider it a serious mistake, for this reason: The law laid down in section 3437 and succeeding sections has been in operation in the state of Ohio for from fifteen to twenty years. I think section 3437 was enacted into law perhaps in 1880; that is the section granting to council the right to grant a franchise. Section 2502, being the section regulating the proceedings of council, and the limitation of the franchise to twenty-five years. The law, as it stands, has been adjudicated; decision after decision has been rendered upon this subject until every word, every syllable, and line and paragraph and diacritical mark is thoroughly understood, and it occurred to me that as much

capital as there is invested in street railways in the state of Ohio, and other public utility interests, it would be little less than criminal to mutilate these sections after they have been so thoroughly established and their meaning so well known, not only to the legal fraternity, but to the public in general. Therefore, Mr. Chairman, in view of that condition, and also in view of the fact we are here in special session, without time to properly consider a subject of this magnitude, I believe it to be the part of wisdom in this committee to recommend to the House that there be no legislation upon the subject of franchises.

Mr. Price: I move that the motion, as well as the report of the subcommittee, be postponed until tomorrow.

The motion is seconded.

Mr. Stage: I should like to vote upon that motion intelligently, and I would like to ask the gentleman from Athens what is the object of postponing this until tomorrow? If we discuss the matter at all, why not at this time?

Mr. Price: The only object of this is, that this report has come in, and it is an important subject. I feel I would be better prepared to act upon it tomorrow than I am to-day, and I think it would be wise upon the part of this committee to postpone it.

Mr. Stage: If we have an assurance here that we shall have an opportunity for public discussion of this question before the reporting back to the House of the bill, I would be perfectly willing to have it postponed until tomorrow; but if in the meantime, the committee is going to decide that we shall report back tomorrow morning, I shall of course desire to say anything I have to say on the subject now. I am willing, so far as that is concerned, to have it go over until tomorrow.

Mr. Painter: Now, Mr. Chairman and Gentlemen of the Committee, we are about to close the discussion and the consideration of the measure we report back to the House. The House has been waiting long and patiently; we are going to have a fight on this question that is now before the consideration of the committee. The gentlemen have had all the time to prepare themselves to consider this matter, to think about it, that other members of this committee have had, and there is no reason why this question should be put off any longer. Let's fight it out here and decide one way or the other, and get this report back to the House as soon as possible.

Mr. Price: Every member of this committee fully realized what was in this code, sent here by our honored governor. I am sorry to learn from

a member of this committee who sits in authority to speak, that the governor was undecided as to what was in this code. I don't know how it came about. The gentleman from Wood has said that the members of this committee have had all the time there is going; but it is not true that members of this committee were advised that subjects that were embodied in that code had been withdrawn at chambers, and we knew it had not been withdrawn in open court. Now then, in view of these circumstances, when it is proposed, and the governor is given as authority, that this committee ought not to consider franchises at this time——

Mr. Painter: That report has been out for three weeks, Mr. Price.

Mr. Price: There have been a thousand other reports that have been out and circulated that I could not verify when I talked with the governor. I have had occasion, once in a while, to talk code matters with our honored governor, very frankly, and from a legal standpoint, and up to this time I have never quoted anything that he has said to me in these private conferences.

Mr. Painter: I have not talked to him about it, but I have seen it in the papers.

Mr. Price: I did not say you had, Mr. Painter; but I do say that on a good many things, I find the governor is misquoted. I don't say he is on this, because I haven't said anything to him on this question, and I, for one, am frank enough to say that I can talk to the governor on this question, as I have talked to him on a number of other questions about this code, and therefore, while I do not say that I shall talk with him, yet I feel that this is being thrown in here rather hurriedly, and without knowing what the report of this committee will be, and this being the most important question that comes before this committee at this session in connection with the code bill, I say it is no more than fair and just that members of this committee should have time for the investigation of this subject, and see whether there is any necessity for revising the franchise laws.

Mr. Guerin: I certainly hope that this amendment to the motion will prevail. I do not like the atmosphere that pervades the room this afternoon. We get in here and have a report sprung on us, and we are informed by the chairman of our committee that, in spite of the fact that every man has been allowed to speak as many times as he chooses, and for such length of time as he chooses, that that rule is to be suspended at this time in connection with this motion, and the rule adopted by the committee, which has been disregarded heretofore, of limiting the time for speak-

ing, — all this because those here may want this franchise matter left alone, and find this is the only way to get it through.

Mr. Cole: Mr. Chairman, I move that the rule be suspended and the gentleman be given as much time as he desires.

Mr. Worthington: I second that motion.

On vote, the motion is carried, and the rules limiting the speakers to five-minute speeches is suspended.

Mr. Guerin: I want to say to you that sections 2502 and 3438, which relate to the granting of franchises by municipalities, under the ruling of the supreme court, are just as unconstitutional as anything can possibly be. The sections relate to certain counties and certain cities, and make exceptions in regard to certain counties and certain cities. My understanding of this matter, up to the time we went into the meeting some fifteen or twenty minutes ago, was, that the unconstitutional features of those acts — and we all agreed they were unconstitutional — should be corrected. That was my understanding in these informal meetings, where no action upon the subject was taken. I will say to you that I do not care what one man or another may say, the members of this committee are intelligent enough to handle the franchise subject, and they have knowledge enough of the wants of the people to act upon that subject.

I don't care to go into general legislation upon this subject, but I am against the acceptance of a report which admits, with full knowledge of the committee, that although we are given an opportunity to correct, we shall yet allow to stand upon the statute books laws that are clearly unconstitutional. I say that action of that kind is cowardly, and I am against it, first, last and all the time. This section of the code was put in here by those who drafted the code, and for a purpose. They studied this matter, and they knew, when they drafted those sections that the laws upon franchises, under the supreme court ruling, were unconstitutional, and I say to you that it is cowardly for this committee to report back to the House a bill which allows an unconstitutional law upon an important subject of this character, to stand upon the statute books, when the governor himself, in his own bill, if you please, has asked us to take up the question of franchises and make such amendments to the suggestions he has made in that code, as we may think are right and proper. There is no intelligent member of this committee that will dispute — and I consider we are all intelligent men — the proposition of law I have laid down, that the statutes that I have quoted are unconstitutional, — they can be nothing else.

Franchises in every county and in every city of the state may expire before the next General Assembly meets; what are you giving to the men who have invested millions in these enterprises? Absolutely nothing — no chance to protect their property or their money, or the millions of holders of bonds who have innocently invested their money, upon the expectation of being able to get valid franchises at the time the present franchises expire. I say to you that it is a moral duty for us to correct these errors, put these organizations and the holders of these bonds, and the stockholders, in a position where their property can be protected. It is not their fault that the supreme court of Ohio has rendered the decision it has, but I say, with knowledge of that fact, with knowledge that these laws are unconstitutional, and that no city council and no board of county commissioners can give a valid franchise, it is our duty not to shirk the responsibility thus thrown upon us, but to meet it like men and to pass laws that will protect these people.

I am not going to urge that we change radically the terms of franchises; it suits me all right, and the conditions for the larger part, suit me all right, but I should like to see a change in some respects. I care more about this arbitration amendment of mine in the conditions relating to franchises than about anything else.

Judge Thomas: Is that the only reason?

Mr. Guerin: No. That is the only condition I care to change, the only one that I personally care to change; but this matter coming as it does, with no opportunity for discussion, I say is unjust and unfair. I sincerely hope that the members of this committee will view this situation as I do. Let us do our duty as members of this legislature; if we don't do anything else, let us correct these unconstitutional laws. Let us not throw off the responsibility that we have assumed. We have taken up this subject at the invitation of the governor, for it was in his code, and it is an important matter. We have delegated the city council the right to control the streets; the granting of franchises is just as much a duty of the city council, as to provide for the paving of streets, and the public is just as much interested in that subject; it is a logical and natural following of this code, where you undertake to delegate to city councils certain powers, and I say that when we come here with our eyes open, recognizing, as we must, that they have no power and no legal right to protect these people, then it is our duty to take the time, —and it will not take much time to do it, to correct these statutes, and if we don't do anything more, to report back

to the House that we have done our duty, or at least, that we have tried to do, and have done, what we thought was right.

Mr. Stage: I hope the atmosphere may not continue to be oppressive here. The chairman has said that we are expected to report the bill tomorrow; I do not know upon what that expectation arises, unless it comes from some unauthorized statement to that effect. We certainly are not expected to report back a bill until we get through, and it occurs to me it would be absolutely impossible for the work we have done to be gotten into such shape that we could present the bill to the House tomorrow.

The Chairman: I simply repeated to the committee what seemed to be the sentiment of the members of the House outside, that we ought to report at the earliest date possible. Probably a large majority of the members will be back tomorrow, and it seemed to be the sentiment that we ought to have some kind of a report to make, and it was my thought that probably tonight the committee would be able to shape up a bill, as I have understood that the clerk has all the amendments engrossed.

Mr. Stage: Now, Mr. Chairman, do I understand from this motion that it is the sense of this committee that when the bill comes back with the amendments, it shall be printed, before it goes into committee of the whole?

The Chairman: It was the understanding of the chair that the report would be made and immediately the bill would be ordered printed..

Mr. Stage: So that no matter what the condition of the bill tomorrow it cannot be presented to the House for committee of the whole?

The Chairman: No, sir.

Mr. Stage: On that I want to say this, and this only: If there is any member of this committee who will at this time or tonight, read the statutes, sections 2501 and following, and sections 3437 and following — those statutes which pertain to the granting of franchises — and then if the majority of the committee tomorrow come in here and vote to postpone consideration of the franchise question at this time, I shall have no fault to find. I think there ought to be an understanding vote cast on this question of leaving the franchises alone. I do not care to discuss the merits of that question at this time, but when the members of this committee have read those sections and understand them, — if then it is the sense of the majority of the members of the committee that the franchise question should be left as it is, I shall have no complaint to make. I heartily hope this motion will prevail.

Mr. Painter : I am not against this motion for the reason that I desire — as was intimated in the remarks of the gentleman from Erie — to keep members of the committee from an opportunity to look up these statutes; in fact, I do not know but what every member of the committee has done that; I have read a great many of them, perhaps not all, for there are about four hundred sections that deal with the subject of franchises. I am perfectly willing that the committee shall have all the time it wants to consider this matter; but there must be an end some time, and I still maintain and contend, Mr. Chairman, that this committee ought not postpone the consideration of this question, that some gentleman who has a pet measure which he may want to inject into this municipal code, who has gone before the sub-committee and failed, and because the atmosphere of this room at this especial time may not agree with his constitution, that we should postpone the consideration of this question and delay our report to the House on that account. If this committee does not want to inject into this code compulsory arbitration on the part of one party, while the other party may do as he pleases, that is no reason to delay the proceedings here.

The question with me, is this: Will the delay of this matter until tomorrow morning do anybody any good? If it does, it is all right; I don't believe it is going to do any good.

Now, it is up to us to decide this point; we have a great question to settle. Where are the men that own these millions of investments that the gentleman from Erie talks about — are they here? Did you ever know of a capitalist in this state or in any other state, whose interests were in danger, that did not have the nerve to ask for something he wanted to protect his interests? Are they here? Everybody has been given an opportunity to come before this committee. Two long weeks the committee has sat under the sound of the public voice, listening to the discussion of every question embodied in the governor's code; everything has been touched upon, but has the capitalist been here talking about franchises? Has he been here urging us to take up this franchise question and inject it into this code? I answer, he has not. Now, these millions they talk about are resting pretty easy; if they were in any danger, those men would be here asking this committee to do something and telling us what to do; but they have not been here at all. I think, gentlemen of the committee, the thing for us to do is to take up this little question of arbitration that the gentleman from Erie is so anxious about, and decide it here and now, and when we have done that, we have satisfied the gentleman from Erie.

Mr. Bracken: Mr. Chairman, I don't think we ought to shut off discussion on this subject.

The Chairman: The rule is suspended.

Mr. Bracken: I have just a word to say on the proposition that is considered the especial pet of the gentleman from Erie. I want to say he has got one of the best propositions in the interest of both labor and capital, that has been presented to this committee.

The gentleman referred to a number of sections by number; we are not all lawyers, and we have no statutes before us; we ought to have the sections before us in order to go over them, line by line. It does not seem quite a fair proposition, and it is in my opinion, both unfair and unwise for this committee to shirk any responsibility that is upon us. I think it would be wise, perhaps, to have this motion of Mr. Price's prevail, and postpone this until tomorrow morning, and all of us come here prepared to take up the subject in a proper way, and if necessary, spend days at it. I am in perfect sympathy with the chairman in his desire to have an early report to the House; the House wants it and we want it, and I presume the public wants it; but certainly there is no demand on the part of the House or of the public that we should silence the discussion of this great proposition, in order to gain one or two days' time, at the expense of this subject. For that reason I think this motion ought to prevail.

Mr. Chapman: I agree with the gentleman from Athens; it seems to me we are rushing into this matter in too much of a hurry. This matter of franchises is a large matter; it is large as the code itself; it seems to me we ought to leave it until tomorrow, when we shall be better prepared to consider it.

Mr. Cole: I would like to have one more word before the debate closes. I was disclosing no confidence of the governor's when I made mention of a conversation I had with him, and I am sorry that the gentleman from Erie took occasion to chastise me on that account; but he says that it is unwise not to take up the subject of franchises at this time, and that it is also cowardly. You will remember there was a certain gentleman came out last week in the paper and said it was cowardly not to deal with the subject of franchises, at this special session of the legislature. What did this gentleman do? He voted this afternoon in the senate to support the measure, just as this committee has reported. Perhaps it might be well to defer the matter until tomorrow morning, and give the gentleman from Erie an opportunity to turn the same kind of a summersault.

Now, Mr. Chairman, he says he does not care to go into legislation upon the subject of franchises; but in the very next breath he displays his real position: He has two pet measures that he desires this committee to endorse; one is his arbitration plan and the other is the curative measure for the Rogers law of Cincinnati, and it is single and his sole purpose to open up this subject in order to secure legislation upon those two points.

Now, if we go into those two subjects, into that question of arbitration, it will take up the entire day tomorrow for the discussion of it. Why not begin it now, and keep at it until tomorrow night, if necessary. When the report was brought in yesterday upon the subject of the merit system, I did not rise in my chair and demand that we be given more time, a day or two, for the proper consideration of that question; but we granted them the right that has been granted to every other sub-committee when they report; this committee paid them the courtesy of taking up their report and disposing of it at that time. That is all we are asking of you, to grant us this courtesy that we have granted to every other sub-committee here.

Now, Mr. Chairman, another proposition he made was that there are millions of dollars invested in the state of Ohio, that are placed in jeopardy. I have talked with Mr. Squires, of Cleveland; we had a letter from Mr. Smith, who is at the head of the street railway system in northwestern Ohio, and they both advocate that there be no change in the franchise law; they are willing to rest their millions upon the law as it now stands; therefore, I think the argument upon that proposition falls most abruptly to the earth. I insist, Mr. Chairman, that this committee pay the sub-committee the courtesy of considering the report at this time.

Mr. Worthington: I want to say that I am in favor of the report as made by this sub-committee. I have a great deal of respect for their ability and I feel sure they have given the subject a great deal of study and I believe they have arrived at a wise conclusion.

Mr. Guerin: I want to say a few words in answer to my friend from Hancock county. I was not here when he made his preliminary report, but I have just been informed that when he submitted the report he stated that, in his opinion, there would be no legislation on the subject of franchises, excepting as to the curative act, and he did not think any member of the committee or House could afford to vote against that.

Mr. Cole: I desire to deny that statement. Will you tell me who told you?

Mr. Guerin: I was told by a member of this committee.

Mr. Cole: I should like to have him stand up and make that statement.

Mr. Sharp: I think I heard you make that remark, Mr. Cole, that report.

Mr. Cole: Did you hear me make a report that I would favor a curative act?

Mr. Sharp: No; but you said you thought it was fair, and you did not think any member of this committee could afford to vote against it.

Mr. Cole: I never made any such report, and you did not hear it.

Mr. Sharp: I did hear that.

Mr. Guerin: I don't care anything about that, one way or the other. The gentleman went on to say that the senate had adopted the other provisions made in the report of this committee. I deny that; if my understanding is correct, the senate has retained section 36 of the Nash code, with a curative provision attached.

Mr. Cole: As far as that report goes, isn't it identical with the senate report, that there be no legislation upon the subject of franchises, and that the present statute be permitted to stand without eliminating the so-called unconstitutional features.

Mr. Guerin: I can answer that in this way: You stated to this committee that the senate had done the same thing; that senator Longworth had turned a summersault over night on the proposition — without mentioning his name, though we knew to whom you referred — that he had turned a summersault over night and signed a report, or voted for a report the same as this report. I say that Senator Longworth, a gentleman who is more deeply interested in the affairs of Cincinnati than the gentleman from Hancock, voted for and supported a curative act in the senate, — left in section 36, with the curative act attached, and struck out all other provisions relating to franchise legislation; but I want to say that I have seen times in the last six months when the senate has sent bills to the House, for passage, and that the House has passed, that were simply full of errors and mistakes in law. Because the senate in its wisdom and judgment, did not see fit to take up matters regarding the constitutional features of the franchise law, is no reason why intelligent gentlemen sitting in the committee of the House, should be bound by the action of the senate. I want to say that in an informal meeting of the franchise committee, every person who was there, including a couple of persons who were not members of the committee, were agreed upon the proposition that the only legislation we would recommend, would be the

curing of the unconstitutional acts. There is Mr. Squires, of Cleveland, a splendid lawyer, as good a corporation lawyer as there is in the state, the personal attorney of Senator Hanna, and these people don't want this franchise business dragged in here; Barton Smith, of Toledo, representing the Toledo & Sandusky lines, the attorney of the Toledo Traction Company, and possibly one or two little roads that run out, interurban lines, all these gentlemen having any franchise to renew in the next three or four years, — why don't these people, representing millions of dollars, come down here before this legislature to present this matter? That is the question the gentleman asks. Why? Because they supposed they were in the hands of honest men who would deal with them as they should be dealt with; that the members of this committee and of this House were intelligent enough, if the franchise question were brought before them, to see and read what the supreme court of the state of Ohio have said is the law. I say that is the reason they have not come. They knew that their friends, Painter and Price and Cole, of Hancock county, were on this committee, magnificent lawyers, and they supposed, as long as those men were here, they were safe, that they would get fair dealing at their hands, — and that is the reason they did not come.

But, gentlemen of the committee, I don't care a particle what the senate did; I say to you that any member of this committee, or any member of this sub-committee, cannot give a valid reason why, under the ruling of the supreme court, sections 2502 and 3438 are not unconstitutional. We discussed that matter ourselves; we agreed upon it at that time, in an informal way, and talked it over, and it is my opinion and my belief, after study of this matter, that those sections are unconstitutional, and I will say to you that in spite of the pet measure which you say I have, if this matter goes over until tomorrow morning, I will present to the committee a reframing of those two sections that will bring them under the rule of the constitution that laws of a general nature shall have uniform operation throughout the state. But I do say to you that it is our duty and our moral obligation to correct the law. Mr. Painter, will you tell me what man will be injured by the correction of this? I say it is our duty to correct it. I say I want an opportunity to prepare these matters to submit to the committee, and I will be ready tomorrow morning at nine o'clock, and I ask for that courtesy. I don't mean any discourtesy to the gentleman from Hancock, but I do not want action taken on this report until I have had opportunity to present these matters.

Mr. Stage: I want to explain my position, and ask that this report go over. I want to point out the very clear distinction between this report and the action of the committee on it at this time, and the action on the report of the sub-committee on the merit system. That report we had before us and considered, section by section. This report says to us not to consider the number of sections on the statute books, which we have not before us, and which nine-tenths of the committee have not read. There is another matter that has not been mentioned here, that ought to have some little weight, possibly, and that is, that in all the remarks made about the millions of dollars invested by these corporations, there has not been a word said about the rights of the people in the streets of these municipalities, which are sought to be left to these statutes that we have not the opportunity, at this time, to examine. They ought to balance on the one side the millions of dollars of the corporations which have their money invested, and which are now willing to have the law now on the statute book left as it is. It is possible, upon examination of these statutes, that the members of this committee will feel that the rights of the other party to that contract are not properly protected and safeguarded, by the statutes as they now exist; and if that be true, they ought to have an opportunity to examine those statutes and decide intelligently, and not because they want to support the report of the committee, out of courtesy, or because of any personal affiliations or influence. We ought not to get into a wrangling spirit about this matter; we ought to decide it in a broad and candid manner, and in a constitutional way, without getting into a spirit of recrimination.

For these considerations, I believe we ought to have further time to look this matter up and decide upon it intelligently.

Mr. Price: This debate has taken a little more acrimonious turn than I had anticipated, and I think the gentleman from Hancock will not consider it a discourtesy, if he will look at it in a broad light.

I was the maker of the motion; I always consider that the committee ought to have a right to work with a report as it sees fit, and in that spirit, the motion was made.

Mr. Painter: How long do you expect the committee to wait?

Mr. Price: We were waiting upon you a long time, maybe three weeks, for the report.

Mr. Painter: I am not on the committee.

Mr. Price: Well, the franchise committee has been working all this time to make a report. Now, another thing: Some one has said some-

thing about capital; I don't know as capital has been considered, but inasmuch as those sections are in the code, it strikes me, that as there is nobody before this committee complaining, they must be pretty good sections, or the capitalists would be here against them.

There is one standpoint from which those sections ought to be considered, and that is, that there are a great many interurban roads being created in this state, and they have got to have franchises from the different municipalities. I am frank enough to say that I have not given these sections any consideration. My people in Athens would welcome the day a proposition for an interurban railroad was made, and I believe they would have no objection to giving a franchise. Now, the question comes down to this, that the sections are in such shape that the council cannot lawfully grant a franchise. How did I get that information? Not from searching the statutes; I got it from reading the newspapers, as the governor's advisers were working on the code, and as it purported to come from those advisers, I repeat it, that the franchise sections were in such a shape, as well as the assessment law, that some general provisions ought to be made. When some of — ask that this question go over until tomorrow morning, to afford us an opportunity to examine these sections, we do not intend it as a discourtesy to the chairman of the sub-committee; it was simply as a courtesy to the members who desired to investigate this question.

Judge Thomas: I think that the members should largely vote upon this question as they intend to vote upon the question of whether or not we shall change the present law on franchises, or to leave it as it is.

Mr. Price: Do you mean to say that when I vote on this question, that I must bind myself by that vote? I say to you that I shall not, and no man ought to do that.

Judge Thomas: I am going to explain it. I say that when you vote on this proposition, you ought to determine another thing when you vote, and that is, you ought to determine first, whether you want to change the present law upon the subject of franchises. If you do not want to change the present law, then you ought to adopt the report of this committee. If you are of the opinion that there ought to be some change made, either that the sections ought to be rewritten, or that there ought to be a general revision of the laws upon the subject of franchises, or something of that kind, then of course, it would be all right for us to vote upon the motion.

Mr. Guerin: I want to ask you how the members can intelligently

vote upon that until after examining the statute and seeing what the law is?

Judge Thomas: It is a subject that is not new; it is a subject that has been much discussed in the newspapers and among the members of the House and of the committee, during the whole of this special session. It has not been more than two or three weeks since the newspapers were full of it, and I am pretty well satisfied that every member of this committee has very nearly made up his mind as to whether he wants to go into the general subject of franchises, or whether he does not.

Now, then, let us take one other step in this discussion. Who is asking us to change the law upon the subject of franchises? Are the people of the state asking us to do so? I do not understand that there is any general demand in the state of Ohio for a change in, or revision of, the laws upon that subject. Who does want any change made in these provisions? Why, I say, if anybody wants it, it is the traction companies; it is the street car interests and interests of that kind, who fear that the present law may be in such shape that they cannot obtain, or exercise the right to build electric lines over the country. I will say that I believe the gentleman from Erie, being himself, as I understand it, attorney for a traction company, is largely influenced in his action here by the fear that he cannot obtain for his company, for instance, if they desire to make an extension of their line, a franchise under the law, because he fears that the councils of cities and villages through which it may have to pass, will not be able to grant the rights to his company.

Mr. Guerin: I will suggest that your friend, Mr. Barton Smith, is the main attorney of the traction company I represent.

Judge Thomas: I will ask you, Mr. Guerin, if you are not attorney, too, for one of the traction companies?

Mr. Guerin: Yes, sir; the one Barton Smith is local counsel for.

Judge Thomas: I say, therefore, that is the very thing that influences the gentleman from Erie, very largely, in my judgment —

Mr. Price: I suppose we are all influenced by one motive or another.

Judge Thomas: Of course we are, and I wouldn't give much for a man that was not.

Mr. Price: Will the gentleman state what influences him?

Judge Thomas: Yes, I will. What influences me is this: That if we go into this subject of franchises in this committee, the committee will not be able to make its report for several days yet; if we do not go into it, the committee may be able to make its report tomorrow.

Now, must we go into it? I must say that I believe the street car companies and the traction companies of Ohio have worried along under the present law for several years, ten or fifteen years; they have extended lines all over the country; they have pierced nearly every county in the state in extending their lines under the present law, and what is the matter with that law? If they have done that up to this time, why can't they continue doing it?

Mr. Chapman: What has the supreme court been doing?

Judge Thomas: That doesn't matter; and I must say for the supreme court here, that I believe it is an honorable and upright body of men, and would do right upon any question coming before it.

(Cries of agreed.)

Judge Thomas: I have the utmost veneration for the integrity of that court. I must say, however, that we must not decide these questions for the supreme court; we must leave it for that court to say what is constitutional and what is not. This committee does not know whether the supreme court will wipe out these statutes, or not, because the cases have not yet come before them. I say, let us leave the supreme court alone; it will take care of itself when the question comes before it; let us leave the law alone as it is, because, while it may not be all that we desire, yet, if we go into it, we have to meet, not only the subject of granting franchises in cities, but the subject of arbitration introduced by the gentleman from Erie.

Mr. Painter: That is the key.

Judge Thomas: We have to deal with other questions that will necessarily force themselves upon the attention of the committee. If we must fight out this matter, let us fight it out in the House and not in the committee. That is the proper field in which to fight it out; there it has to be decided, whatever this committee may do, and while I am as fearless as any man, I think, upon this subject, and am willing to take chances with any other man upon the subject if we go into it, I say that I believe at this time there is no necessity for dealing with this subject. There is nothing at stake, unless it be the interests of the street car companies, and I think they will be protected as well in the future as they have been in the past. I don't believe we ought to legislate simply because they want us to do so; I think they can get along for another year or so, until some subsequent session of the legislature shall take up this subject of franchises, consider it in all its phases and settle it once for all.

Mr. Allen: Mr. Chairman, the air does not seem to be getting any better here and in order to clear it up, I move the previous question.

Mr. Chapman: I will second that.

The motion is lost by a vote of eighteen to three.

Mr. Guerin: I had made up my mind not to say anything more on this subject, but the remarks of the gentleman from Hancock brings me to my feet again. The testimony of the gentleman from Hancock was that Mr. Squires, one of the greatest, perhaps the greatest, corporation lawyer in the state of Ohio, and Mr. Barton Smith, of Cleveland, representing large traction companies, and general counsel of the road I do business for now and then, were in favor of leaving the franchise laws exactly as they are. The statement of the gentleman from Huron was, that it didn't make any difference whether the traction companies want them changed or not, they ought to be allowed to remain just exactly as they are. One of the two gentlemen is wrong; either the traction companies want them changed, or they do not. From the statement of the gentleman from Huron, I should judge they don't want them changed, and I believe every electric line in the state would like to see the cities tied up so that the interurban lines could not come in, unless over their lines. I stand on that proposition exactly where I have stood; I am in favor of doing everything that will influence the people to invest their money in this state, to bring new enterprises here, to promote prosperity, and to enact laws that will be beneficial to the public and the people of the state of Ohio, and I say to you that no railroad company will invest money in this state in the construction of a railway, under the laws contained in the statute books to-day.

Judge Thomas: I will ask you if they have not done it?

Mr. Guerin: They have done it, sir, but not since the supreme court rendered this decision. How can we tell what the supreme court will do in the future, is the question asked by the gentleman from Huron. What an absurd question to ask a lot of intelligent men! What is the value of the supreme court reports, which every lawyer who attempts to do any law business, possesses? Never once in a thousand times do you find a decision of the supreme court right exactly on the point upon which you are called upon to express an opinion; that is not the value of the reports. A lawyer is trained in reasoning, legal reasoning, and he can take a decision of the supreme court, read it, and then apply the reasoning of the court to the statute, and if he is a man of ordinary intelligence, and such

plain facts appear on the statute as appear in these, he can tell exactly what the court will do. These statutes are identical with the statutes relating to the classification of cities; why should they stand upon any different legal reasoning? Why, it is an absurd proposition for the gentleman to advance, to say that we cannot tell what the supreme court will do. He says the supreme court is composed of honorable men; no one will dispute that proposition.

His next proposition was to let them alone and they will take care of themselves. Nobody doubts that they are entirely able to take care of themselves and the state, too, and they have been doing it for some time past; but that is not what should be brought to the attention of the committee.

Judge Thomas: This statute on the subject of franchises is based upon classification, to some extent, as I understand?

Mr. Guerin: Yes.

Judge Thomas: And that question is decided by the supreme court in some decisions, where it is decided that classification is unconstitutional?

Mr. Guerin: Yes.

Judge Thomas: Now, I will ask you whether the right given under that statute to grant franchises, in certain cities, under certain circumstances, such as cities of the first grade of the first class, whether there is anything in that, that would cause the supreme court to declare that statute unconstitutional? Isn't it merely a description which is immaterial, so far as the constitutional part of it is concerned? For instance, a question like this: The county commissioners in counties which have a city of the first grade and first class, shall have power to do certain things; in your opinion, is such a law as that unconstitutional?

Mr. Guerin: I think so, unquestionably.

Judge Thomas: The court has not decided upon any question of that kind?

Mr. Guerin: But they decided so many questions relating to classification, that there can no longer remain a doubt —

Judge Thomas: Isn't there a doubt whether the court would declare a law of that kind unconstitutional?

Mr. Guerin: I do not think so. And I will say to you that when you talk about summersaults, the summersault turned by these great attorneys on this very proposition, that is, their opinions given a few weeks ago and their opinions quoted now, are double-headed summersaults of a character we seldom witness, and I say to you that the only question

relating to these statutes is whether or not the legislature, if the classification had been stricken out, would have passed the bill without the classification; and I will say to you and to every one here, if you will read those statutes, it will be apparent that the statutes were passed for the very purpose of giving different cities of certain classes and certain counties, the rights and privileges set forth in the statute book.

Judge Thomas: That does not necessarily follow?

Mr. Guerin: You take the old statutes and you will find they were amended to put in that very thing.

Mr. Painter: Then why wouldn't the supreme court support them?

Mr. Guerin: Because that old law was repealed. This law was passed for the purpose of making classification, and I say under that ruling of law, it is unconstitutional; but whether it be so, or not, it is my opinion; perhaps not very great; but here we are, with ample opportunity and with no excuse, absolutely no excuse, why we should not make sure that these statutes are correct and constitutional. I say that every interurban route built in the state is worth to the people of the state ten times the cost of the construction of the road; it is the greatest developer of civilized times, this interurban railway system. I say to you that there should be no obstacles placed in the way of these roads getting franchises. You can tack on all the conditions you please, gentlemen, but leave the field open so that capital will come here and be invested, so that the people of our state may profit by it.

What harm can be done by letting this go over until tomorrow, allowing members time to examine these statutes? What harm can be done by our correcting these statutes, and if the committee, by a majority vote, decide against it, I shall not be satisfied, but I shall stand by the action of the committee. But I want to be given the time here to examine those two sections to which I have called attention; I want the members of this committee to say whether they ought to be amended now. It is important to every person in this state. Why this rush? One day's rush now may delay the progress of the state for a year and a half. I say it is wrong, absolutely wrong. It ought to be attended to, and there is no reason why it should not be. I sincerely hope my motive in this matter will not be misconstrued.

Mr. Bracken: The gentleman on my right (Mr. Thomas) claimed that there was no one here asking for any revision or change in the franchise laws of this state, save the street railroads. Now, if he will remember, a delegation came here during our meetings in the House, rep-

representing the Ohio Federation of Labor, a body composed of delegates from the various branches, representing no less than 50,000 and speaking, perhaps, for 200,000 people in organized labor,—and they did ask for legislation.

Now, it is well known that the people of Cincinnati demand legislation; they demand, if there is any opportunity to get, a lower fare. The proposition of the gentleman from Erie is that these people ought to be here, speaking in their own interests. Senator Hanna is a member of the Civic Federation, claiming to be in the interest of harmony between capital and labor, and one of the fundamental principles of that organization is to prevent strikes by means of arbitration.

Now, why don't we invite these people to address us? Not only invite them, but why not, in this committee, offer a special invitation to this particular member of the Civic Federation to come before this committee, or this body, and speak upon this proposition of arbitration? I am sure, gentlemen, if Senator Hanna is a member of that body, wishing to bring about peace and harmony between capital and labor, he will come. Here is a subject on which his observation is based, a subject on which we all know he is well informed. There is no man in this country who ought to receive an invitation more quickly to come before us and enlighten us on these propositions, than Senator Hanna, and I say, gentlemen, that we ought to invite him.

Mr. Cole: Why is it that you have just conceived the idea of inviting Senator Hanna at this particular time? This matter has been before the House for some time; why hasn't he been invited before this time?

Mr. Bracken: Everything comes in its time.

Mr. Cole: The time for public hearings is out.

Mr. Bracken: He was invited, along with the general public, at that time. This would be a special honor to Mr. Hanna, to invite him at this time before this committee, and I am sure his friends and representatives should not object, if I am willing to extend the invitation. I will say that this is the proper time and the only time that we have had this particular subject before us in this way. The committee has just made its report, or its recommendation; we have been waiting for this report of the committee. I prepared two little amendments for that committee to act upon. They have given no report, and I desire to be heard on this proposition. As to courtesy to the sub-committee: I know of no sub-committee of this body, or no gentleman in this body that I would

extend courtesy to more readily than to the gentleman from Hancock. Here is an opportunity to take advantage of one of our greatest openings to bring harmony about between capital and labor. You can hardly take up a paper but what you see accounts of these troubles between capital and labor; business is dislocated, bad feeling engendered — all on account of not having a provision for arbitration which will prevent strikes and lockouts. And yet the proposition of this gentleman to bring about peace and harmony, to secure arbitration that would be in the interest of liberty and of our people, is sneered at, and the gentleman is told that he has a pet measure that he wants to bring before this committee! Now, I say, if you ever get a corporation attorney in the way of doing good — maybe this is his offering, for all we know, because he has been in the interest of corporations — why, I say, help it along.

Mr. Cole: Do you mean you are opposed to compulsory arbitration?

Mr. Bracken: When that compulsion forces a man to work, or to submit to the dictates of his employer — that is a different proposition. This proposition we urge, is a part of a contract, in which no injustice is done to labor, but the broadest liberty is given. I want to say that I came here before the 74th General Assembly and worked to kill a bill that was in favor of compulsory arbitration, because it would put our people in jail if they refused to abide by that; every right-minded man will concede that it is not fair to compel a man to work against his wishes. I know that, if you view this matter superficially, you will think I am reversing myself; but I am not a member of the supreme court. Now, gentlemen, this is a fair proposition; we have the privilege of voting as we please on this; we may vote with you; I don't know. I went before you and presented my resolution and left it to your consideration. You bring in this report, and I may vote for it, if you can bring up arguments, but so far, you are advancing none.

Now, gentlemen, in all candor, is it wise that we should put off the consideration of this question? The people of Ohio are watching us; the people of the United States are watching this extraordinary session of the legislature. No one desires to stay here; we are many of us working, as the boys say, "on a dead horse," meaning that we are working for money that we have already received. When we were elected, our remuneration was fixed and our term of office named at two years, and if the duties of the state require us to stay here two years, I say to stay for the two years and do our work. Let us never shirk a single proposition or

responsibility in order that we may get away a few days earlier. Why should we consider a matter of a few hours, or a few days, when this great question is before us?

Gentlemen are here on both sides of this question, representing the corporations and the state and municipalities — corporations, too; but none of you speak for the people; I say they are parties, too; maybe, third parties. It is a question as to the interest of this capitalist and that capitalist, but nobody seems to speak for the people. You are speaking for your clients, on both sides, and I think I will speak for mine. I would be unfaithful if I received my retainer and then did nothing; so I shall speak for my clients, the people. I am in perfect sympathy with all that has been said here as to making capital safe; I want every dollar that is put into any investment to be made sure and certain. I want to bring into this great state every dollar that I can to lay steel rails in every county, if it will advance our progress and our prosperity. I am not opposed to capital; I have my ideas about capital, how capital might best serve itself and the people, and for that reason, I want the subject open, because I believe capital often stands in its own way, and I think such companies as charge five-cent fares stand in the way of their own best interests, the interests of the city and the interests of the people.

Now, these are all questions before us. We should not think of letting them go by.

Judge Thomas: Can't the councils of cities and villages now make contracts with street car companies to carry for three cents a mile, under the law as it is now?

Mr. Bracken: They can; but there is no such thing as limiting them. We can make the law to limit them; we can direct council.

Judge Thomas: Do I understand by that, that we should pass such a law as would require council to insist that passengers should be carried for three cents a ride?

Mr. Bracken: No, sir; I don't want to do that. I would insist upon giving the people of every municipality the right to own their own street cars, or other public utilities, whenever a majority, or two-thirds of the people of that community said they wished to do that.

Judge Thomas: Is that your reason for wishing to take up this question now, so that the question of public utilities can also be passed upon?

Mr. Bracken: That is one; but I want to tell you very frankly and seriously that my principal object for advocating this now, is to give the

gentleman from Erie an opportunity to present his proposition of arbitration. I realize, from my experience during the regular session that the material is not in the House to-day that would grant to people the choice to operate their own municipal enterprises.

Judge Thomas: You do not think that proposition would carry?

Mr. Bracken: I don't think it would carry, and I want to be practical. I believe, if we were forced to come to time on this arbitration measure, it would carry, for two reasons: one is, that it is absolutely fair. Another is, that the gentlemen who own the roads — and especially the gentleman I referred to awhile ago — are standing for that proposition before the public; the gentleman I referred to would have to reverse himself, if he did not stand for it before this body.

The Chairman: Has the gentleman from Franklin concluded?

Mr. Bracken: No, sir; I have just commenced.

Judge Thomas: This scheme of Mr. Guerin's, to insert in contracts, or to allow council to insert in contracts, where it grants a franchise to a street car company, an arbitration clause, would be inserting something that would bind the companies, but not the laboring men — is that not so?

Mr. Bracken: Yes.

Judge Thomas: So that it would be a contract, in that respect, on one side; the laboring men would be bound, or not, as they chose.

Mr. Bracken: The contract is entered into between two parties, the city and the company, to do certain things; the laboring men do not come in there at all.

Judge Thomas: They make a contract by which they say to the company whenever any trouble arises, that it must be submitted to arbitration?

Mr. Bracken: Yes.

Judge Thomas: Well, that would be binding upon the company, but not upon the employees.

Mr. Bracken: Yes, and it is reasonable. The company receives the grant of a valuable franchise, and it is made one of the conditions of the grant, that the street cars shall not be tied up, for fair-minded men can solve the question through arbitration, under the terms of the grant.

Mr. Painter, do you desire to ask any question?

Mr. Painter: No, I am waiting until you get through.

Mr. Bracken: Then you may as well sit down. But I will not keep the floor when any other gentleman desires it, and I will therefore give way to Mr. Painter.

Mr. Painter: I don't care to go into the discussion of this arbitration matter, but I just want to say to the committee that we can see what this is leading to; we can see how this question is broadening out, until it will take in everything from alpha to omega. The gentleman has the right to be heard; I have entire faith in his honesty, because I have been through one session with him, and I am willing to give him all the credit for honesty and fearlessness, and to say that he deserves it; but his statements, and the statements of the gentleman from Erie show to this committee clearly the magnitude and the scope of the questions they would have us consider, should we take up the subject of franchises at this time.

The Chairman: The question is on the motion of the gentleman from Athens, to postpone the consideration of this report. The secretary will call the roll.

On roll call, the vote resulted as follows:

Ayes — Guerin, Price, Williams, Thomas, Allen, Silberberg, Stage, Bracken, Ainsworth, Maag, Huffman, Brumbaugh, Sharp.

Nays — Painter, Cole, Metzger, Chapman, Worthington, Denman, Hypes, Willis.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

September 25, 1902.

9:00 A. M. Thursday.

The committee met pursuant to adjournment, Mr. Willis presiding.
Mr. Stage was appointed secretary pro tem.

On roll-call the following members responded :

Painter,	Denman,
Guerin,	Hypes,
Price,	Willis,
Cole,	Stage,
Williams,	Bracken,
Metzger,	Ainsworth,
Thomas,	Maag,
Allen,	Brumbaugh.
Silberberg,	

Mr. Painter moved to amend section 90, by inserting at the end of line 1023, the following: "Provided that no action, as provided in sections 1777 and 1778, to enjoin the performance of a contract heretofore or hereafter entered into by a municipal corporation, shall be brought or maintained unless such action is commenced within one year from the date of such contract, and this provision shall apply to pending contracts."

Amendment carried.

Section 48-9. On motion, this section was adopted, reading as follows :

Section 48-9. When the corporation makes a contract for any improvement or repair provided for in this chapter, the cost of which will exceed five hundred dollars, it shall proceed as follows :

First. It shall advertise for bids for the period of two consecutive weeks, or if the estimated cost exceed five thousand dollars, four consecutive weeks, in two newspapers published in the corporation, or one newspaper, if only one is published therein ; or by posting advertisements

in three public places in the corporation if no newspaper is published therein.

Second. The bids, sealed up, shall be filed, in cities, with the auditor, and in villages with the village clerk.

Third. The bids shall be opened at 12 o'clock noon on the last day for filing the same, in cities, by the auditor and the director of public works, and in villages by the clerk and mayor, and publicly read and filed in cities in the office of the director of public works and in villages in the office of the clerk.

Fourth. Each bid shall contain the full name of each person interested in the same, and shall be accompanied by a sufficient bond of some disinterested person or persons, residents of the county, or a certified check on a solvent bank of such city, or village, for such an amount and upon such terms as may be prescribed in the advertisement for proposals, as a guaranty that if the bid is accepted, the contract will be entered into and the performance of it properly secured.

Fifth. If the work bid for embraces both labor and material, they shall be separately stated, with the price thereof.

Sixth. None but the lowest responsible bid shall be accepted, when such bids are for labor or material, separately; but in cities the appropriate department, and in villages the council, may in its discretion, reject all the bids, or may, at its discretion, accept any bid for both labor and material which may be the lowest aggregate for such improvement.

Seventh. The contract shall be between the corporation and the bidder, and the corporation shall pay the contract price for the work in cash; provided, however, that the contract price may be paid in assessments, as the council, in its discretion may have previously determined, and suits to recover or enforce such assessments may be brought by any person holding such claim, in the name of the corporation.

Eighth. Where there is reason to believe that there is collusion or combinations among the bidders, or any number of them, the bids of those concerned therein shall be rejected.

Ninth. Whenever it becomes necessary in the opinion of the appropriate department in cities, or of the council in villages, in the prosecution of said work, to make alterations or modifications in any contract, such alterations or modifications shall only be made by such director of public works or council by resolution, but such resolution shall be of no effect until the price to be paid for the work or materials, or both, under the altered or modified contract, has been agreed upon in writing and signed

by the contractor and the mayor and auditor, or clerk, on behalf of the corporation, and approved by the council; and no contractor shall be allowed to recover anything for work or material, caused by any alteration or modification, unless such contract is made as aforesaid; nor shall he, in any case, be allowed, or recover for such work and materials, or either, more than the agreed price.

Provided, further, that for all improvements where an assessment is to be levied on abutting property, that so much of section 97 as is inconsistent with this enactment shall not apply.

The sub-committee to which was referred the wording of section 82, reported through its chairman, Mr. Denman, as follows:

After the word "exceed," in line 886, strike out the original amendment, and insert in lieu thereof the following:

"One hundred and fifty dollars per year, each, in cities having a population according to the last or any succeeding federal census, of 25,000, or less, and for every 30,000 additional inhabitants determined as aforesaid, said compensation may be, but shall not exceed, an additional one hundred dollars per year each."

When so amended, the section was adopted.

The sub-committee to which was referred section 71 reported through its chairman, Mr. Stage, as follows:

Strike out, in line 759, the figures and words "2709, Revised Statutes," and insert, "54, of this act."

The sub-committee to which was referred section 54 reported through its chairman, Mr. Stage, as follows:

In line 638 insert the word "herein" before the word "provided."

Strike out all of line 638 after the word "provided."

Strike out all of lines 639, 640 and 641 to and including the words "Revised Statutes," and insert the following:

"Whenever any municipal corporation issues its bonds, it shall first offer them at par and accrued interest to the trustees or commissioners, in their official capacity, of the sinking fund, or, in case there are no such trustees or commissioners, to the officer or officers of such corporation having charge of its debts, in their official capacity, and only after their refusal to take all or any of such bonds at par and interest, bona fide for and to be held for the benefit of such corporation, sinking fund or debt, shall such bonds, or as many of them as remain, be advertised for public sale. In no case shall the bonds of the corporation be sold for less than their par value; nor shall such bonds when so held for the benefit of such

sinking fund or debt, be sold, except when necessary to meet the requirements of such fund or debt. All sales of bonds, other than to the sinking fund, by any municipal corporation, shall be to the highest and best bidder, after thirty days' notice in at least two newspapers of general circulation in the county where such municipal corporation is situated, setting forth the nature, amount, rate of interest and length of time the bonds have to run, with time and place of sale. Additional notice may be published outside of such county by order of the corporation council; provided, however, when any such bonds have been once so advertised and offered for public sale, and the same or any part thereof, remain unsold, then said bonds, or as many as remain unsold, may be sold at private sale at not less than their par value, under the direction of the mayor and the officers and agents of the corporation by whom said bonds have been, or shall be, prepared, advertised and offered at public sale; provided, further, that when it shall appear to the trustees or council of any municipal corporation, to be for the best interests of such corporation to renew or refund any bonded indebtedness of such corporation which shall not have matured, and thereby reduce the rate of interest thereon, such trustees or council shall have authority to issue for that purpose new bonds, with semi-annual interest coupons attached, and to exchange the same with the holder or holders of such outstanding bonds, if such holder or holders shall consent to make such exchange and to such reduction of interest."

In line 641, insert before the word "the" the following: "When new bonds are issued —"

Section 89. Section 89 is re-referred to a sub-committee composed of Messrs. Silberberg, Chapman and Thomas.

On motion, the committee recessed to 2:00 o'clock p. m. of the same day.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

THURSDAY, SEPTEMBER 25, 1902—2:00 P. M.

Pursuant to recess the special committee met in the Finance Committee room, Mr. Willis presiding.

Mr. Stage was appointed secretary pro tem. On roll call the following members responded:

Painter,	Worthington,
Guerin,	Denman,
Price,	Hypes,
Cole,	Willis,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Chapman,	Maag,
Allen,	Sharp.
Silberberg,	

The sub-committee, to which section 80 was referred, reported through its chairman, Mr. Denman, as follows:

After the word "municipality" in line 859, add the following: "Provided, however, the compensation paid for publication in a newspaper printed in the German language shall not exceed the compensation paid for the same publication printed in the English language."

Mr. Maag moved to amend the report of the sub-committee by adding the following:

"Except as otherwise provided in this act, in all municipal corporations the statements, ordinances, resolutions, orders, proclamations, notices and reports required by this act or the ordinances of any municipality to be published, shall be published in two newspapers of opposite politics of general circulation therein, if there be such in the municipality, and for the following times: The statement of receipts and disbursements required shall be published once, the ordinances and

resolutions once a week for two consecutive weeks, proclamations of elections once a week for three consecutive weeks, notices of contracts and of sale of bonds once a week for four consecutive weeks, all other matters shall be published once."

On motion, the amendment is adopted.

Mr. Painter moved to amend the report of the sub-committee further by inserting before the word "Provided" in the first line of the amendment offered by the sub-committee, the words "and council shall fix the rate to be paid for such printing."

By consent, the sub-committee accepted the amendment.

When so amended, the report of the sub-committee was adopted, and section 80 approved, reading as follows:

Section 80. In passing, recording, publishing and authenticating ordinances, council shall be governed by the provisions of sections 1694, 1695, 1696, 1697, 1698 and 1699 of the Revised Statutes, and for all purposes such sections shall be and remain in full force and effect; and in addition thereto all ordinances and resolutions requiring publication shall be published in a newspaper printed in the German language, if there be such paper published and circulated in the municipality, and council shall fix the rate to be paid for such printing; provided, however, the compensation paid for publication in a newspaper printed in the German language shall not exceed the compensation paid for the same publication printed in the English language. Except as otherwise provided in this act, in all municipal corporations the statements, ordinances, resolutions, orders, proclamations, notices and reports required by this act or the ordinances of any municipality to be published, shall be published in two newspapers of opposite politics of general circulation therein, if there be such in the municipality, and for the following times: The statement of receipts and disbursements required shall be published once, the ordinances and resolutions once a week for two consecutive weeks, proclamations of elections once a week for three consecutive weeks, notices of contracts and of sale of bonds once a week for four consecutive weeks, all other matters shall be published once.

The sub-committee to which was referred the question of making the merit system applicable to cities of 10,000, or over, reported through its chairman, Mr. Guerin, that it was the sense of the committee that such a provision could not be made; if the merit system were incorporated into law, it must be made to apply to all cities.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

THURSDAY, SEPTEMBER 25, 1902—2:00 P. M.

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Mr. Stage was appointed secretary pro tem. On roll call the following members responded:

Painter,	Worthington,
Guerin,	Denman,
Price,	Hypes,
Cole,	Willis,
Williams,	Stage,
Metzger,	Bracken,
Thomas,	Ainsworth,
Chapman,	Maag,
Allen,	Sharp.
Silberberg,	

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Mr. Williams moved to amend by inserting "except members of the police and fire departments."

Amendment seconded and carried.

Mr. Williams moved to further amend the amendment by inserting before the first word of Mr. Bracken's amendment, the words, "In the absence of stipulations to the contrary."

The question recurring on the amendment as amended, it was carried.

Mr. Silberberg moved that a re-consideration be had of the vote whereby section 135 was approved.

Motion carried.

Mr. Silberberg moved to amend section 135 as follows:

In line 1551, strike out all after the word "by." Strike out all of lines 1552, 1553 and up to and including the word "board" in line 1554, and insert in lieu thereof the following:

"The court of common pleas of the judicial district in which said municipal corporation is situated, three for a term of two years, three for a term of four years and three for a term of six years; and thereafter as the terms expire the court of common pleas of the judicial district shall appoint three directors for a term of six years each and shall fill all vacancies in said board."

Amendment carried.

When so amended the section was adopted.

The Committee on Franchises reported through its chairman, Mr. Cole as follows:

Mr. Guerin moved to amend the report of the committee including section 36, and adding thereto the following:

"But all unexpired grants of rights or franchises heretofore made by any municipality in accordance with the provisions of any statute or act of the general assembly existing at the time when they were made, and which have been accepted, and where money has been expended in good faith on account thereof, are hereby re-granted for such unexpired portion of the respective terms of the original grants in accordance with the terms and conditions of the same, any law or part of law, to the contrary notwithstanding."

Mr. Stage moved to amend the amendment as follows: "Provided that no franchise hereunder shall be effective or valid until the same has been submitted to a vote of the people of the municipality at a special or general election, and a majority of those voting on such questions at such election, vote in favor thereof."

Amendment to the amendment carried; ayes, 11, nays, 8.

The amendment when so amended was voted on and lost by a vote of 9 for and 10 against.

On motion the Committee recessed to meet at 7:30 P. M. of the same day.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

THURSDAY, September 25, 2:00 P. M.

The Chairman: The chair wishes to lay before the committee a little matter, namely, the report of the sub-committee on franchises. The question is on the adoption of the report of the sub-committee.

Mr. Guerin: I move you that the question of franchises be not discussed by this committee. It is a big proposition, and I think that it should be referred to the House without recommendation, and I therefore make that motion.

The report of the sub-committee on franchises is as follows:

"REPORT OF THE SUB-COMMITTEE ON FRANCHISES.

To the General Committee, House of Representatives:

"Mr. Chairman and Gentlemen of the Committee: Your sub-committee on Franchises, by a majority vote, offer the following report:

"The subject under consideration being franchises, as contained in Sections 28, 29, 30, 31, 32, 33, 34, 35 and 36, beg leave to report in favor of striking out all of such sections and recommend that no legislation be had upon the subject of franchises.

"Signed

RALPH D. COLE,
U. G. DENMAN,
OREN F. HYPES."

Mr. Guerin: I move you that the report be so amended that Section 36 be included in this report, and that there be added to it the following:

"But all unexpired grants of rights or franchises heretofore made by any municipality in accordance with the provisions of any statute or act of the general assembly existing at the time when they were made, and which have been accepted, and where money has been expended in good faith on account thereof, are hereby regranted for such unexpired portion of the respective terms of the original grants in accordance

with the terms and conditions of the same, any law or part of law, to the contrary notwithstanding."

I will say that is identical with the provisions of the Senate.

The motion is seconded.

Mr. Painter: That which the gentleman refers to is the Cincinnati curative act. It is an act wherein the legislature takes upon itself to grant the street railway, or traction company of Cincinnati, a fifty year franchise, without the people of Cincinnati having any voice in the matter whatever, only through their representatives upon the floor of the House and the Senate., and I am against the motion.

I don't know as it is necessary for us to go into an extended discussion of this matter here and now, because, of course, whether it is adopted by this committee or not adopted by this committee, it will be fought out to a finish upon the floor of the House.

That motion, if adopted, Mr. Chairman, would pledge the members of this committee to the support of a law that is drawn up for the express purpose of advancing the specious arguments of the gentlemen that appeared before the committee in the House, for the express purpose of nullifying the decision of the Superior Court of Cincinnati, of effecting that, and that only.

Some years ago, gentlemen of the committee — and I think every member of this committee and every one present will remember — there was enacted by the legislature of Ohio what was known as the Rogers act, in which they thought they constitutionally granted to the council or the board of administration of cities of the State of Ohio, the right to grant to corporations, a street railway franchise for the term of fifty years. There was no doubt at that time, and there is no one who can gainsay at this time, that the majority of the people of Cincinnati were, almost to a man, against that law, and that the people of the State of Ohio were against that law; but it was put through the legislature anyway. At that time the men who controlled that city government — and they are the same men who control it today — were in power, and before the succeeding legislature had an opportunity to repeal that law — because they did repeal it as quick as they could, it was so odious to the people of the State of Ohio and to every one — there was a franchise granted to the street railways of the city of Cincinnati, in which the interests of the corporation were looked after, and in which the city government forgot to look after the interests of the people. But that law was so odious, as I say, that an attempt was made to get a franchise

in the city of Cleveland — because the law was general and not special, it applied to every city — an attempt was made to get a franchise in the city of Cleveland, but it was frustrated, and by what? By the indignation of an outraged populace, and the council did not dare to grant the franchise that the corporation asked under the law that was passed by the legislature.

The people of Cincinnati protested against the granting of the franchise, and it culminated in a suit being filed by a tax-payer of that city in the Superior Court, and has resulted in the decision by that court that that law was unconstitutional, not because of any overruling by the Supreme Court of the State of Ohio, but on the basis of coinciding with the decisions that were rendered by the Supreme Court of the State of Ohio, before ever the Rogers law was passed, or the contract granted to that corporation under that law.

When gentlemen talk about curative acts, and give as their reason why the legislature of Ohio should pass them, they say it is because this law has been overturned or declared unconstitutional, because of the recent decision of the Supreme Court that overrides and reverses past decisions of the Supreme Court of Ohio, but they either do not know what they are talking about, or they want to fool somebody, for it is not true.

You tack a measure that is as odious as that measure is — and it is odious — upon a code that we have been working diligently, honestly and earnestly to compile all these weeks, while our colleagues have been waiting, and the people of the State of Ohio have been waiting — I say, you tack that onto the code, and take it into the House, and all our labor will be for naught; because I want to say to you that there are members on the floor of that House that will not vote for a municipal code with that odious provision tacked on to it.

Now, don't do that, gentlemen of the committee, leave it out, and bring this measure, which is a question in and by itself, up on the floor of the House, and let the members decide that, so that members of the legislature who want to vote for this code that we have so laboriously built here, can do so without voting for something that they believe will stigmatize their names and brand them as unworthy representatives of the people.

Mr. Price: Mr. Chairman:— It strikes me that the argument of the gentleman from Wood is not altogether germane to the question at issue. I have said before that I do not know and I am not satisfied what a

provision of this kind will do. I am not satisfied that it will give the benefits that are desired; that is, I am not satisfied so that I would feel like asserting that it would. But if it would give the results, and I felt satisfied that it would, I would vote for it more readily than under any other consideration. I have not heard that any member was tarnished by the vote he cast for the supposed curative law last winter; on the other hand, that law has stood as well in public opinion as any law that we passed. The question as to what the Rogers law was, is not the question before us. After I have fraudulently made a piece of negotiable paper and put it out and it comes into an innocent purchaser's hands, the innocent purchaser is a different person from me, and the courts have always protected the innocent purchaser when he held commercial paper, under certain conditions.

Now, another thing: The law is, today, that all contracts in reference to real estate, must be in writing; yet if I verbally agree with you to sell you a piece of land, and you go upon that land and put improvements upon it, the court will step in and say that because I wished to perpetrate a fraud upon you, and you held no contract in writing, the court will see that I give you a deed in order to make you whole — yet the law says that all contracts must be in writing. The parties that got the franchise under the Rogers law, are not all of them probably not a majority of them today, the men that got the franchise originally. The gentleman from Wood says that this law was a general law; that the court did not declare it unconstitutional because of recent decisions of the Supreme Court. Granted that that is true, which I have not examined to see — then it comes back in this way; that with the courts there open to any citizen who wished to prevent the council giving that franchise, the citizens stood by and permitted the council to give the Cincinnati Traction Company a franchise, stood by and saw them expend vast sums of money in perfecting this improvement, stood by until the stock of that company got into innocent men's hands — that is the situation; and no matter how the gentleman may say that that franchise and the law under which it was gotten — how much it was tainted, and how much it was odious — that is not the question before this general assembly; but it is a question of whether the persons who now are interested in that company, shall be given relief; if it is within the power of the legislature to make them whole, that we should do so. Equity, justice, morality demand it at our hands, if it can be done, and I will tell you that more than the

Cincinnati Traction Company and the stockholders thereof, are involved in this. The fair name of the State is interested in it. The doctrine of repudiation has been advocated in many of the States, and many of the States have adopted it, and today the States that have adopted repudiation are not the States that stand highest in the business world. The Chamber of Commerce, at Cincinnati, understands this, and passed resolutions asking that we attend to this, and no man need fear that he will besmirch his reputation by voting for a measure that is equitable and just, or, in other words, "Do unto others as you would that others should do to you." If you were the innocent holder of stock, you would feel that if there could be anything done to protect you in your rights, as a citizen of the State, that it ought to be done; because your money is in the service of the city; you have afforded the means of transportation, you have carried out your trust in good faith; the people of the city have stood by and have seen you expend your money, when the courts were open to them to go in and get out an injunction, or some other proceeding, and they have not done it. When the condition is called to the attention of the courts, the court declare the law unconstitutional. The people of Cincinnati, if we are to judge by their action, must have thought the franchise granted under that law was a good one. The courts are there the same as everywhere else, and it is only equitable, right and just, and the highest sense of morality would dictate, if you come to consider this question carefully, that if it lies within the power of the legislature to make these innocent parties whole — because they are innocent parties there — that we should do so; and the city, having its own reputation in the commercial world to maintain, always having stood at the topmost notch, in financial standing, she asks today, through her Chamber of Commerce and her representative citizens, without regard to political party, that this legislature make those people who hold that stock, whole. Why not do it? There may be other things, but we are considering this one now, this one evil, wherever its ramifications may go. If the healing balm of this legislature can be applied to the wounds that are left open, I, for one am willing to apply the remedy. It will redound to fairness in business, to the reputation of the municipality, to the fame and fair name of the great State of Ohio in the maintenance of her position in the financial world, and it means a great deal to us.

Mr. Williams: I did not want to say anything at all on this question, but when it comes up, we ought, perhaps to put ourselves on record. If it came to the original ground of the Rogers law, I should not vote

for it. When I came up here — and I think I can say the same of Mr. Silberberg — I don't think either of us was in favor of continuing this franchise; but after we got up here, and the question began to be agitated — because it is agitated more here than it is in Cincinnati — we found some remedy was needed. We found upon investigation that there were about five thousand stockholders; we found that about 73 per cent. of the stock is held by people, in shares of from one to fifty, or from \$50 to \$5,000 or perhaps \$10,000. We wrote letters to different people concerning it. Mr. Silberberg, I think, wrote forty letters to as many different people, receiving, I think, twenty-nine answers, and a large majority are in favor of continuing this franchise.

Mr. Ainsworth: Can't you be a little more definite in these statements of yours? All the statements you are making are indefinite.

Mr. Williams: Mr. Silberberg has the letters, and he has also, in writing, the exact number of shares of stock, and the number of shares held by each one.

There was a meeting here of the Knights of Honor, and a delegation came from Cincinnati of twelve or fifteen people; twelve, I think, we saw; of that number there were nine in favor of continuing the franchise.

Mr. Chapman: Do you think, Mr. Williams, if this matter were left to a vote of the people of Cincinnati they would decide in favor of a curative act?

Mr. Williams: Most assuredly.

Mr. Chapman: Then why not adopt the referendum?

Mr. Williams: As far as I am concerned, there is no objection on my part to that; I am simply explaining my position in voting for this curative act. Aside from that, all the papers down there — with perhaps the exception of one paper that none of us read, down there, the position of which I don't know, on this question — all the other papers have sent us editorials urging us to pass the measure.

Mr. Painter: What is the capital stock of this company?

Mr. Williams: I think it is \$25,000,000.

Mr. Painter: Now, these stockholders — how long have they held the stock?

Mr. Williams: I think, recently; probably in the last three or four years — since this decision.

Mr. Painter: Since what decision?

Mr. Williams: Since the consolidation; before that time, you will remember — before the Rogers law was passed, we had different routes.

and while you could get six tickets for a quarter, you could not get transfers on them.

Mr. Painter: For a long time they had five-cent fares, straight?

Mr. Williams: Before the Rogers law was passed.

Mr. Painter: After that went through and they got the new franchise, what was it?

Mr. Williams: Five cents, straight, with transfers.

Mr. Painter: Now, don't you know, Mr. Williams, that certain men in a company always hold a controlling interest?

Mr. Williams: I think that is true, probably, of every company but this company.

Mr. Painter: You then think 73 per cent. is held by whom?

Mr. Silberberg: By women, mechanics, stenographers, clerks, servant girls, bookkeepers, etc., and thrifty poor, generally.

Mr. Painter: Then those clerks, bookkeepers, servants, etc., control the stock of that company — \$25,000,000?

Mr. Williams: They would have the controlling interest if it were all united.

Mr. Painter: Fourteen million. How many stockholders do you have?

Mr. Williams: I think it is between 4,500 and 5,000.

Mr. Painter: It averages, then, about \$3,000 worth of stock possessed by the servant girls?

Mr. Williams: Mr. Silberberg has the exact figures. There are 850 shareholders who hold from one to five shares; then 859, about, of the stockholders hold from 50 to 250 shares. Mr. Silberberg has the exact figures —

Seven hundred and thirty-one stockholders who hold from six to ten shares, or from \$300 to \$500.

Seven hundred and nineteen stockholders who hold from eleven to twenty shares, or from \$550 to \$1,000.

One thousand and twenty-eight stockholders who hold from twenty-one to fifty shares, or from \$1,050 to \$2,500.

Five hundred and seven stockholders who hold from fifty-one to one hundred shares, or from \$2,550 to \$5,000.

Three hundred and seventy-three stockholders who hold from 101 to 200 shares, or from \$5,050 to \$10,000.

One hundred and fifty stockholders who hold from 201 to 300 shares, or from \$10,050 to \$15,000.

One hundred and fourteen shareholders who hold from 301 to 500 shares, or from \$15,050 to \$25,000.

Sixty stockholders who hold from 500 to 1,000 shares, or from \$25,000 to \$50,000.

Now, we found, whenever we asked anyone, that perhaps every one, every citizen of the city of Cincinnati, or every voter, at least — every one I had spoken to, either had something in these himself, or some one of his family had.

Mr. Painter: Where did your figures come from?

Mr. Silberberg: I will make a statement when Mr. Williams gets through.

Mr. Williams: Then the Chamber of Commerce passed this resolution:

"WHEREAS, The recent decision of the Supreme Court of the State of Ohio has made doubtful the legal status of the various corporate interests of the State, including the Cincinnati Street Railway Company, under its franchise as now existing, which reflects an agreement and obligation honestly entered into between the municipality of Cincinnati and a great corporation operating system of transportation which affects the concerns of every citizen of this community; and

WHEREAS, The good name and credit of this city calls for faithful performance on the part of the municipality under its obligations to such corporations, incident to agreements mutually entered into, whatever be a court interpretation of technical features of the State law in force at time of entering into such agreements and obligations; therefore,

Resolved, By the Cincinnati Chamber of Commerce, that in the interest of the credit of this city, in the interest of confidence in the honesty of the municipal government, in the interest of capital and enterprise which seeks opportunities within the boundaries of this municipality and elsewhere in this vicinity and State, in the interest of the many holders of the stock of such corporation, especially those whose hard earnings and savings have been invested under full confidence in the understood pledge of security, in the interest of a common recognition of good faith in every agreement officially entered into on the part of our city government, it is hereby declared, that it is the duty of the municipality to stand unwaveringly for fulfillment of every agreement entered into with such corporations as the Cincinnati Railway Company, and in proper manner to give the public full assurance that under no such conditions as now exist will there be any advantage taken of possible defects in the statutes.

Resolved, That the Chamber of Commerce hereby pledges its support to proper measures which may be introduced to remedy the defects which have been disclosed in the statutes relating to corporation interests.

(Seal.)

Attest: C. B. MURRAY, *Superintendent*.

According to my understanding, there has been about \$25,000 of stock issued under the Cincinnati Traction Company, and nobody can tell me that there is invested in that corporation over \$5,000,000. That stock was selling, before this recent decision, at 145; it is now selling at 133 or 134.

Mr. Painter: I want to ask you if they can't get a twenty-five year franchise any time they want it?

Mr. Williams: No; I wouldn't vote for a twenty-five year franchise.

Mr. Painter: Can't they get it from the city government?

Mr. Williams: Not under this law, the way I understand it.

Mr. Painter: Not under this law, because this law is unconstitutional; but under the general law?

Mr. Williams: I was going to explain to you where I think the trouble lies. The stock has been issued to the amount of \$25,000,000; since the Rogers law has been enacted, that has been sold for over 130, I can say with safety. Now, the people—and the people I am seeking to protect are not the ones who had that when it was below par, and if it was sold today at the best premium you could get, it wouldn't sell for \$5,000,000, and the ones who would lose, are not the large stockholders, because they are in a position to gobble up the new concern; but it is the poor fellow who bought when the stock was high, and put all his earnings in there, and that stock would now be worth about one-fifth of par, or about \$25 a share, when it has been worth \$140. I am not here to protect any of the Kilgour interests, or the interests of any of the big stockholders, because they have the power to come in and get in with the new company, but the poor fellows, who have these small holdings, are the ones who will lose, because they will simply get the value of their stock in the old company.

Mr. Worthington: I would like to know on what ground the law was declared unconstitutional?

Mr. Williams: Well, I think this: I don't think it was the recent decision of the Supreme Court; I think the court down there placed its decision on another ground; I don't think it was on the recent decision.

Mr. Worthington: I wanted to know if someone could tell me on what ground it declared the Rogers law unconstitutional?

Mr. Cole: Wasn't it declared unconstitutional on the ground that it was a special act for corporate powers?

Mr. Williams: It was not on the special classification.

Mr. Cole: But under that other section that says you cannot confer corporate power by special act.

Mr. Stage: Will you state to the committee why, in your opinion, the Cincinnati Traction Company could not get a franchise from the city of Cincinnati for twenty-five years under the general law?

Mr. Williams: Well, I must confess my ignorance upon the general law, except as I understand it. I understand it is that you must have the consent of the property owners, and then the council, in addition to that; is that the idea? Then perhaps, another fact, the street car company, the Cincinnati Street Car Company, or the Cincinnati Consolidated, whichever it is, does not control, or has not the management of the car company; they have leased it for a number or a term of years to the Cincinnati Traction Company, which is composed of people, I think, from a Philadelphia syndicate, and they are to secure to these stockholders 5, 5½, 5¾, and I think, 6 per cent. But I think under the terms of that lease, all that is thrown upon the old company; all the loss would fall upon these particular stockholders.

Mr. Stage: I am not clear, under your answer, why they cannot get a grant from the city. Is it because the terms provided are of such a nature that they can't get a grant in Cincinnati?

Mr. Williams: As I say, if the law is as I understand it, they must have the consent of abutting property holders and then the consent of council. The only thing would be this: I will tell you honestly, gentlemen, that I am telling you the exact thing that is urging me to vote for this; because I have no sympathy, personally, with the large stockholders of this concern, because they got in when it was below par, and sold out when it went above, and when it was around 130, these poor people, who knew nothing about business, invested; they knew nothing at all about the rights of the different parties; they simply thought it was a good thing and they invested their money. There was a capital stock of over \$25,000,000, selling at 135 and up to 145, when, as I say, the best you could do, it wouldn't bring \$5,000,000.

Mr. Worthington: I would like for Mr. Williams, or any other lawyer, to explain to this committee the difference between the Rogers law and the general law under which franchises were granted?

Mr. Williams: The Rogers law, as I understand it, provided that in any municipality, by consent of the council, they may incorporate all the lines accepting, and have a franchise for fifty years, which was to be revised at the end of twenty years, and then at the end of fifteen years

thereafter, and it was to be under the control of the board of public service. Now, the only complaint I have to urge, and the only one I have heard against the Traction Company, is because of its accommodations, that they are not running sufficient cars; but I will say this in their defense: I think it is because of the taxation in Cincinnati; they are taxed per linear foot for their cars, for every car they run, and as a consequence, they run as few cars as they can.

Mr. Worthington: The old law provided for a twenty-five year franchise, and this law provides for a fifty year franchise; that is the main difference, is it, between the old law and the Rogers law. But in either event you could go before council and get the consent of council, and they grant the franchise. Did this do away with the consent of the property holders?

Mr. Chapman: Wasn't it a board of four that had the granting of the franchise, under the Rogers act?

Mr. Williams: It was the council; the council granted it; the board of public service has complete charge of the communications; then every fifteen years, the council fix the terms.

Mr. Painter: I will ask you, Mr. Williams, if before this combination was formed, this company got the franchise for fifty years, whether there were not more cars run on the line than after they got the fifty-year franchise?

Mr. Williams: Yes; I will say that, and I will tell you that I don't think there is any complaint in Cincinnati on the question of five-cent fares; but there is a complaint about the number of cars; they ought to run more cars. In place of a five-minute schedule and a three-minute schedule, they ought to have a three-minute and a one-minute schedule; though, as I say, I think their reason for running fewer is on the ground of taxation.

Mr. Worthington: Do they complain that the company is not living up to its contract?

Mr. Williams: Oh, no; there is no complaint of that; the board of public service has the right to regulate that; they have the power to regulate that.

Mr. Silberberg: I knew I was going to be called upon to give my vote as to that curative act, for this franchise, and in order to be able to cast my vote intelligently, I thought I would make diligent inquiry as to the feeling of the public in reference to granting the curative act. The first step I took was to see Mr. Collins, the secretary and treasurer

of the Traction Company, asking him by whom this stock was held, the amounts and the occupations of the people who were holding that stock. I received an answer in which he said in reference to my request: "I beg to say that within the time limited, it would be impossible to prepare such a schedule with any degree of accuracy. From my general knowledge of the stockholders and their occupations, I will say that a large majority, say, 73 per cent. of women, widows, stenographers, mechanics, servants, clerks, small merchants, bookkeepers and thrifty poor in general. Our stockholders' list comprises nearly five thousand names, and it would be impossible, without consulting the directory, to give with any degree of accuracy, the actual occupations."

I made the request again later, if I could not procure these names and occupations by coming up and looking at their books; he said I could; but not having the time, I did not do so. Then I saw that the Chamber of Commerce had passed a resolution to vote for this curative act. Now, I wanted to reach the common people, and in doing so, I telephoned to thirty-five different people throughout the city, asking their opinion as to how I should cast my vote. Last week I received answers from twenty-seven of them, stating that they had interviewed many of their friends and neighbors, and the request of the majority of them is, that I should vote for the curative act. About a week ago, there was a convention of Knights of Honor held in this city; they had their headquarters at the Southern Hotel, and I noticed there were twenty some odd Cincinnati delegates registered at the convention. I made it a point to interview eleven of them. Nine of the eleven said, "Yes, vote for the curative act, under the condition that we are to receive better service than we have now." One of them said he was undecided, and the other one said "No." Taking all the opinions I have gathered, it seems to me that the majority of the citizens of Cincinnati wished this measure, and in view of all these things, I have concluded to cast my vote in favor of the curative act.

Mr. Worthington: Mr. Chairman, and Gentlemen of the Committee:— I wish to say a few words to explain my vote on this question. Up to within a few days ago, I expect I knew as little about this question as any man in the legislature, and I don't know that I know a great deal more now than I did before; but I have been trying to ascertain and learn as much as possible about this question. I look at it from a business standpoint, strictly. Now, it seems to me that some years ago the legislature enacted the Rogers law, which delegated certain powers to council, and I understand it gave them the power to grant franchises

to street railway for fifty years. That is my understanding. The next step would be for the council to take action on that. The legislature had nothing more to do with it; they simply delegated the power. We are not now discussing how that law was brought about, but we do know that it was enacted into law. Then this company goes before the council of Cincinnati and secures its franchise.

Mr. Cole: Are you sure they went before the council, or the board of administration?

Mr. Worthington: I simply asked the question of the gentlemen from Cincinnati, and he gave me that answer.

Mr. Cole: It is the board of administration.

Mr. Worthington: I would say then, that the law gave to some person the power to grant that franchise. They went to work and secured the franchise in a business-like way —

Mr. Cole: There is no question about that.

Mr. Worthington: I am glad a lawyer knows a business proposition when he meets one. Then they went to work and sold millions of dollars of stock. It has been shown here by the gentlemen from Hamilton county that a great deal of that stock has been bought by innocent parties, by men and women of small means, who invested their money in good faith. That stock represents property, and therefore, I think that their interests should be looked after.

Mr. Stage: I would like to ask you if you know that stock will be lost?

Mr. Worthington: Well, I don't believe that a shorter franchise would increase the value of that stock.

Mr. Stage: Would it decrease it?

Mr. Worthington: In my judgment, it would.

Mr. Silberberg: It would; four-fifths.

Mr. Painter: The gentleman from Hamilton said that stock sold at 145. I asked him what amount it had decreased and he said it would sell for about 135. Do you consider that much of a drop, when they haven't any franchise?

Mr. Worthington: That might depend on the action of this legislature, to a very great extent.

Mr. Painter: Don't you think if they can get a twenty-five year franchise it would cure that 10 per cent. of a drop?

Mr. Worthington: I don't believe it would; I think the twenty-five years would more than make the difference.

Now, I believe that these innocent stockholders should be protected. I do not believe that the legislature of Ohio can afford to go to work and enact a law, let it stand for several years, let the people invest their money in stocks and then go back on them, when it has an opportunity to cure that very thing; therefore I shall vote for this curative proposition.

Mr. Williams: I overlooked one matter, and that is, to explain why the stock did not drop any more. This attack and this decision does not affect the entire road; it simply attacks the John Street line; but a suit has been filed since and is now pending, attacking, on the same decision, the entire line; so I don't think there will be any question but what the court will follow the same line as in the other decision.

Mr. Ainsworth: Can you state what percentage of this stock is represented by money, or how much by water — what is called "watered stock?"

Mr. Williams: As I told you, I don't believe that the company is worth in the actual stuff, over \$5,000,000; the other, I think, is entirely due to the franchise.

Mr. Ainsworth: Then you mean there is \$20,000,000 represented by water?

Mr. Williams: By franchise.

Mr. Painter: What do they pay the city of Cincinnati for this franchise?

Mr. Williams: I think the city gets \$200,000 a year.

Mr. Silberberg: I think, five per cent. of the gross earnings.

Mr. Stage: For how much is the company on the tax duplicate?

Mr. Williams: That I can't tell you.

Mr. Stage: Two million dollars, is it not?

Mr. Williams: Well, I can't tell you.

Mr. Stage: I move to amend the amendment offered by the gentleman from Erie, as follows:

"Provided that no franchise hereunder shall be effective or valid until the same has been submitted to a vote of the people of the municipality at a special or general election, and a majority of those voting on such question at such election, vote in favor thereof."

That does not need to be debated. The statement has been made by the representatives of Hamilton county here, that they believe that a majority of the people there want this re-granted. If that is true, as

representatives of the people, they must vote for such a proposition; that is the only fair way.

Mr. Williams: The only question would come — I don't suppose that could be presented at this November election.

Mr. Stage's amendment was seconded. A roll-call was demanded, resulting as follows:

Ayes — Painter, Cole, Thomas, Chapman, Denman, Hypes, Willis, Stage, Bracken, Ainsworth, Maag.

Nays — Guerin, Price, Williams, Metzger, Allen, Silberberg, Worthington, Sharp.

Later, Messrs. Williams and Silberberg, changed their votes to "aye," thus resulting in ayes, 13; nays, 6.

Mr. Stage, the author of the amendment, also asked to have his vote changed from "aye" to "no," thus resulting in ayes, 12; nays, 7.

Mr. Guerin: Mr. Chairman: — It is rather amusing to me to hear the arguments advanced by the opponents of this amendment. Outside of any matters that have been said today here, the chief objection, so far as I have been able to gather the same from conversations with gentlemen, is to the effect that the Cincinnati Traction Company is not furnishing to the residents of Cincinnati the accommodations they should be entitled to, and that, Mr. Chairman, is the principal objection that has been urged to me by those opposing this measure.

I do not believe the members of this committee, or the public in general, know very much about the provisions of the so-called Rogers act, a law which came before the general assembly of the State of Ohio and passed both branches of this assembly, not a law especially designed for the citizens of Cincinnati, but a law designed for every city in the state wherever any street railway franchise might expire. I propose to read to the committee section 2505*d*, which tells something about the terms and conditions under which franchises could be granted, under this so-called Rogers law, and after it is understood by the committee, I would like to have an expression from these gentlemen as to why the Rogers law was so much more infamous than any other law which stood upon the statute book:

(Mr. Guerin reads section 2505*d*.)

Mr. Painter: Do you want me to answer the question?

Mr. Guerin: You can answer it now, if you choose; I don't yield the floor.

Mr. Painter: No. Wherein the odiousness of the Rogers law consists, is this: That in this case it granted the authority to four men, appointed by the mayor of Cincinnati — not elected by the people — to give away franchises worth millions of dollars, and that is what the people objected to, and that is what I object to.

Mr. Price: Weren't those men officers of the city?

Mr. Painter: Appointed by the mayor, those four men, yes.

Mr. Guerin: In the first place, I desire to take up the section I have just read. As Mr. Painter says, it gave in the city of Cincinnati power to grant franchises, to the board of administration of that city. Possibly that board was appointed by the mayor, I don't know. The Cincinnati delegation, probably, just before that time, came to the general assembly of the State of Ohio, and in order to provide a just and a proper government for the city of Cincinnati, provided that the board of administration, if the case was such, should be appointed by the mayor; that they should have power as such, to perform the ordinary duties of that office. Cincinnati was regularly represented in the general assembly at the time this particular bill was passed. She had probably as large a delegation, in proportion to the total number of members, as she has today. Her members were here, and I presume they saw that no legislation went through the general assembly without their approval.

In the next place, this goes on to state or to provide that this is particularly aimed where different roads, in different cities desired to consolidate, or rather, one or more lines of road in a certain city desired to consolidate, that they could do so, upon the terms and conditions named in this act. It provides that there can be no more fare charged under the consolidation, than was charged on any one line of the railways that went into the consolidation. Now, it said the board of administration in the city of Cincinnati might extend these grants for a period of fifty years beyond the time of the unexpired portion of the grant of any such street railway. I don't know whether those roads had years to run on their franchises, or whether they did not have a day; I don't know anything about that; but the law is so framed that not only the Cincinnati railroads could take advantage of that, but any railroad of the State of Ohio, whose franchise had expired, or who could influence the city council of any city in the State of Ohio, might come in and take advantage of this, and secure the renewal of the franchise for a term of fifty years from that time. It did not limit it until the franchise expired; and so it was in Sandusky last year, that in the formation of a company by

which I was employed, before the franchise expired, we went in and secured the consent of the city council to surrender that franchise, and upon new terms and conditions, take a franchise for twenty-five years.

Mr. Allen: That law specially provides that franchises shall not be extended over fifty years from the date of the passage of the bill.

Mr. Guerin: That is right; fifty years from and after the passage of the bill; that is, they can surrender whatever they had on their contract; if a company had fifteen years, it could go to the council and say: "We will give up our franchise; we will accept new terms and conditions, and we will accept a franchise for fifty years from the date of the passage of that law." There was nothing inexplicable about that; nothing at all, that I can see. It provided further that the municipal corporation in which such street railroad is situated shall have the power at the end of twenty years from the passage of this act, and every fifteen years thereafter, to fix the rates of fare, car license fees, percentage tax on gross earnings, transfers and all other terms and conditions on which such street railroad is operated in said city. I say to you, gentlemen, and I will say later on, that the provisions there contained are more beneficial to the citizens of the State of Ohio, than the provisions granting power to council to impose conditions, as contained in the statutes today. This gave them absolute power to impose, ever so often, new terms and conditions relating to the condition and terms on which the street railway might occupy public streets, and do it oftener than now, for under the present law, they can only do it once every twenty-five years, unless they can succeed in getting some other conditions into the franchise, and it is not often they can do that.

I would like to ask the gentleman from Cincinnati if he knows whether or not the acts of the board of arbitration of Cincinnati at the time of the passage of the franchise in question, or at any other time, were subject to review by the city council?

Mr. Williams: I can't tell that; I am not in a position to state that.

Mr. Guerin: This goes on to say further that the said terms as fixed by the board of arbitration, if there be such board, must be approved and confirmed in the same manner as may be required at the time for other acts of such municipal corporation. I don't know whether the council had the right to supervise the action of the board of administration, or not, but they had a right, under the law framed by the representatives from Hamilton county, and passed by them — for they passed that, undoubtedly, just as you gentlemen pass bills that you wished, last

winter — "It doesn't apply to any county except mine, vote for it"—I have no doubt but that the bill was shaped in that very way.

Mr. Cole: Will the gentleman yield to a question? I just understood you to say that that applied to every city in the state. You now say the men of the Hamilton county delegation said, "That applies only to my county — vote for it?"

Mr. Guerin: No, sir; I say if the board of administration are not subject to the acts of the city council, that then those at fault were the members of the Hamilton county delegation, because they framed that law — that is what I say. It says further that notice of time and place when such rates and regulations shall be fixed, shall be given by publication in two daily newspapers of general circulation in such city and the hearing on the same shall be open and public, and the terms there fixed shall be equitable according to the then cost of carrying passengers. Should the parties not agree as to whether such terms are equitable, the same may be submitted to the adjudication of a court of competent jurisdiction in a suit brought by the company to enjoin the municipal corporations from enforcing the terms so fixed.

Now, turning to the statutes as they exist today, I desire briefly to compare the sections relating to the granting of street railway franchises with this so-called odious Rogers law, and show under what better conditions the people would have been if that bill had remained on the books; for I say to you that all the people ask for is, that at all times, their rights be secured in receiving good service from the corporation, and the corporation to pay a just and equitable tax. My own belief is, that the people of this state do not care, or the people of Cincinnati do not care whether the franchise is fifty years or not; they do not care in this city whether it is one hundred years, if the city is always secure in getting good service, low rates of fare, transfers, and also securing from the company a just payment of taxes.

Mr. Painter: I would ask the gentleman from Erie if they have good service in the city of Cincinnati?

Mr. Guerin: I will say to my friend Mr. Painter, that I think I am in as good a position to answer that question as he is — just exactly, and I say to you what you said today, or yesterday, about these delegations coming here asking for certain things: Have you seen crowds of Cincinnati people up here asking you to take the stand you have taken at this time?

Mr. Painter: No; I haven't; but I asked you if they had good service. Do you refuse to answer the question?

Mr. Guerin: I do not refuse to answer the question. I think they have probably as good service as the company can afford to pay for.

Section 2502 says: "Nothing mentioned in section 2501 of the Revised Statutes shall be done; no ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council; and no ordinance for the purpose specified in said preceding section shall be passed until public notice of the application therefor has been given by the clerk of the corporation in one or more daily papers, if there be such, and if not, then in one or more weekly papers published in the corporation, for the period of at least three consecutive weeks; and no such grant as mentioned in said preceding section shall be made, except to the corporation, individual or individuals, that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant nor renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than twenty-five years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of a grant."

Those are the provisions that, in Section 2502, protect the public — providing that the company that will offer at public bidding, to carry passengers at the lowest rate of fare, may have that franchise. That is the only section of the statute that secures any right to the people, as to the terms and conditions which must be insisted upon before the railway can have the franchise. Under the Rogers law, they had more than they have under the statute; it is provided in that that they not alone must have a low rate of fare, but that they must give transfers, they must pay a percentage of the gross earnings, gross receipts, they shall pay their taxes and do other things, and twenty years, if you please, after the time this original grant was made, the city might impose additional burdens or conditions upon this street railway company, and it must accept those

conditions if it longer occupies the streets of the city of Cincinnati; and after the expiration of the first twenty years, then every fifteen years, the city council might impose new conditions upon that railroad company. Mr. Painter says, "Are they getting good service?" Here is a law which stood upon the statute book of the State of Ohio at that time, and was considered valid. Here is the delegation from Hamilton county, which evidently wanted that law—I mean, for the city administration, for they did not try to have it repealed. Here is a delegation that wanted the Rogers law, so-called, passed, and they secured its passage. They went back to Cincinnati to their board of administration—if, as you say, appointed by the mayor, the mayor was elected by the people, and when they elected that mayor, they knew the mayor would appoint the administrative board for the city. The administrative board acting under this, saw fit to make a franchise for a certain street railway company, or a number of consolidated companies. The men of this board of administration were men undoubtedly chosen on account of their integrity and intelligence—I say this board of administration was undoubtedly chosen because of integrity and intelligence; they had legal counsel; they sat down to make a written contract—for that is all a franchise is—they made a written contract with this street railway company, and they put into it every single term and every single provision that they thought was proper to impose upon that company at that time. If they did not say that, instead of having a three-minute service or schedule, we must have a one-minute service—that was the fault of that city, and not the fault of the stockholders nor of the legislature of the State of Ohio, Mr. Painter. A man is presumed to know, in law, of what he does, and I say to you that you cannot, under any rule of construction, in law, say that an intelligent man who sits down and makes a written contract, can afterwards be heard to come in and say there are terms and conditions outside of that contract which should have been included, but that were not. You know that, and every lawyer at this table knows that—that oral testimony is never allowed to enlarge the terms of a written contract. So I say to you that if the Cincinnati Traction Company is not today giving the service that those men who are making this trouble desire—and they are not the reputable citizens of Cincinnati, I will tell you that—it is not the fault of the legislature, but of the people of the city of Cincinnati, who made that contract, and who had ample opportunity to put in there everything they wanted there before they granted

that franchise. I don't know why the gentleman from Wood should stand here as the guardian angel of the poor people of Cincinnati, when the Chamber of Commerce, the entire Cincinnati delegation in both houses of this 75th general assembly, and our two illustrious, able and honored United States senators say it is the only thing to do, the only thing that the State of Ohio should do, is to grant unto this company the right to exercise the powers given under that contract, that anything else would be a violation, a disgrace to the State of Ohio, and a disgrace to the members of this general assembly.

Talking about tainting your name! I say to you that it is disgraceful for a man to say that because we have the power, we will take away rights acquired by contract upon a valuable consideration, where both parties acted in the best of faith, believing that what they did was lawful. I say to you it is wrong — it is wrong morally and it is wrong legally, and I do not believe that you will ever succeed in getting the necessary number of votes in this general assembly to do any such thing as that.

You passed two curative acts last winter. The gentleman from Wood and the others opposing this measure, voted in favor of those curative acts; introduced, one of them was, by our honored speaker. Why? Because he believed, if money had to be expended, and innocent parties had come in and become parties to contracts made under acts passed by this general assembly, they should be protected against the action of the courts. The gentleman from Wood voted for that, passed, I think, the 9th day of May, in which act was the word "franchise," this word so odious to the gentleman from Wood. He voted, gentlemen of the committee, in favor of that, and now, why this sudden turning in affairs? What people, I ask, from the city of Cincinnati, have asked you, Mr. Painter, to take up this fight, and do as you are doing now? I believe in home rule. I believe, if the delegation from Hamilton county want something that will be constitutional, if the citizens want something there that will be constitutional, they should have it.

The gentleman says the people in power in the city at that time, who granted the franchise, are in power today. I agree with him perfectly. They have the confidence of the citizens of Cincinnati, and why should they not continue in power? Why, it is a complete answer to your proposition, that it is not popular with the people of Cincinnati. The very fact that the men who made that franchise and that contract with the street railway company, have been continued in power, is an answer, I say, to your proposition.

The gentleman has talked about the value of the capital stock, and about the amount of the capital stock. What has that to do with this proposition? We all know how these combinations are formed. Why, I know of a case myself, in the city of Seattle, Washington, within the last three years, where fourteen companies were consolidated into one company, purchased for half a million dollars, bonded for that amount, and ten million dollars of stock was put out and sold to the public, and who got the benefit? The men who made that consolidation. The roads paid the interest on their bonds; they paid the dividends on the stock, and as long as the company did that, and no injustice is done to the people who bought the stock, what crime can there be in that? Isn't that legitimate business? The value of the stock is its earning power; if the value is behind the stock, so that the stock earns a fair dividend, haven't the people a right to issue as much as the corporation can stand, sell their stock and make what they can. I want to say for the benefit of the gentleman here, that according to my understanding, about a year ago last February, they made a perpetual lease with an entirely different company, whereby this company assumed the franchises, etc., under this lease; they assumed the franchise under this lease and agreed, in turn, to pay the old company a certain percentage, and I suppose that the new company issued more stock and sold that stock to the public; now, on what is that stock based — what does it represent? It represents, not alone the street cars, but the franchises which were granted by the board of administration under the Rogers law; that is the most valuable asset they have; the street cars and equipment make up the assets; if that franchise and property, as they are operating it, will pay enough over the dividends on the stock to make it valuable, there is nothing wrong in the law, or in morals, if they so sell stock up to that amount, if the public are willing to buy, and they have bought. You have heard here that 73 per cent., almost two-thirds of the entire capital stock of that company was sold to working people. That is what I was told when I first heard anything about this. Who suffer, if that franchise is lost? The men who formed the consolidation, the men who made this lease and sold this stock have had their money on the stock; they had a right to sell it, and they sold it; these people own it. You are not injuring those people who sold the stock, but the poor people who bought the stock — those are the ones you are injuring, because what redress have they? What right has Mr. Painter, or anyone in this general assembly to say we shall impose upon this company a twenty-five year franchise, when every one knows that a reduc-

tion of the years of a franchise is a reduction in the worth of the franchise, and that no sooner is the time of the franchise reduced than the worth of the stock will depreciate.

There is something else behind this matter, and by that, I mean that Mr. Painter is not sincere when he says that the people of Cincinnati are demanding the repeal of this law, and that he does not believe, legally, you can do it. Mr. Painter is opposed to this measure. Mr. Painter is opposed to long-term franchises — that is the reason; but I say he is mistaken when he thinks that that company has a long-term franchise, for every so many years that franchise is open to revision; the franchise is not today as long a franchise, in time, as the street railway in the city of Columbus has. The revision of the terms and conditions here will not occur as soon as the revision of the terms and conditions of the Cincinnati Traction Company; so that when he says the people do not want such a long franchise, but want a twenty-five year franchise, he is mistaken in what he is saying. Clearly, they need not have long-term franchises, when you look at the Rogers law and see the provisions relating to revision.

I have said almost as much as I desire to say at this time. I am very sorry indeed that this matter came up in this committee; I would much rather have had the whole matter referred to the House. It is a big question, a question in which every man in the assembly has as much, if not more interest, than in almost anything else, for whatever form of government we adopt, the citizens will see that we have good government; but this is something that relates to the protection of the public; this relates to people who have innocently put their money into a great enterprise, acting in good faith on the action of the general assembly of the State of Ohio. I believe, myself, in the passage of a bill that will guarantee to every man, wherever he may reside, that the doctrine of repudiation shall never prevail in the State of Ohio; that if he has made any contract, has purchased any bonds, or has done anything else, where an expenditure of money in good faith has been had, on account of an act passed by the general assembly of the State of Ohio, that the legislature of this state will see that he is protected, and no matter what the courts may rule — if he has acted in good faith, he will be protected. It is an honor to this state that two men of such national prominence as Senator Hanna and Senator Foraker, and so far as I know, all of our state officials, should stand upholding a doctrine of that character; it places Ohio where she should be placed — among the list of law-abiding

and honest states, and any other doctrine would mean disgrace to every man in the general assembly of the State of Ohio, I care not who he may be, and I shall say that, while I feel bound by the action of this committee for what it has done here, this is a matter that rises above party, it is a question of morals with me, as well as a question clearly established in equity practice the world over, and I want to say that I propose, so long as I remain a member of this general assembly, to do all in my power to assist our leaders and the other members of this assembly in doing something that will shed glory and honor upon this House.

Mr. Cole: Mr. Chairman, and Gentlemen of the Committee:— I don't care to detain you long on the discussion of this question, but I desire to say that I do not yield to the gentleman from Erie, or any other man, in admiration for the two great statesmen that it is to the credit of the Republican party for placing in Washington. Two mightier men live not within the limits of the nation, and I am sure that, regardless of political bias today, there is not a man within the confines of our state who can look at those two men without feeling a proud and patriotic feeling swelling within his bosom, and, sirs, when it comes to charging any member of this general assembly with aught derogatory to the fame of those two illustrious men, I brand it, sirs, as infamous. I shall not challenge the motives of the gentleman from Erie county; I have credited him with sincerity, but I have always given equal credit for the highest character and sincerity to my friend who sits beside me. (Mr. Painter, of Wood county.) There is not a more honest man in this general assembly, and though it might be that there was a determined effort on the part of certain parties to besmirch his character once upon a time, he has come forth unstained, he has come unscathed through that ordeal, and there is not one blot to tarnish the record he has made.

But, now, Mr. Chairman, relative to this Rogers act. I am a little amazed that the gentleman should stand before this committee and defend the Rogers act, that has gone down in the history of Ohio, with the brand of "infamous" attached to it, and whenever you hear the name of Rogers and his act, coupled with that name is the word "infamous." Was it not a bad act? Then why, sirs, did the people of Cincinnati retire to political desuetude the men who enacted it into law? Was it not a pernicious measure? Then why, gentlemen, did they return a Democratic delegation from Hamilton county, who, in the very next session of this general assembly, repealed the odious measure?

I care not to go into the details of that measure. That is history, and the standing it has among the people of the State is sufficient for me. But as to its being a general act: Anyone who reads Section 1652 — I beg your pardon, I have inadvertently taken up a book under my hand, and I presume the old book was ashamed that within its pages should be such an odious piece of legislation as that law, for some one has detached it therefrom. But, sirs, read Section 2505a and 2505b, and if you can find any other location in the State of Ohio, or any other city to which it could apply, then I will admit the contention of the gentleman from Erie, that it is a general law, a general act. But it was enacted for one only purpose; that purpose is known and is well established; it was, in effect, although not in terms, in spirit, though not in form, a special act conferring power upon a certain corporation, and hence, the Superior Court in Cincinnati held it unconstitutional. I would think, Mr. Chairman and gentlemen, that the means by which that act was secured, and the granting of that franchise, were sufficient to condemn it. You say they had equal protection under this law that they had under the general law prescribed in 3437, and 2501, 2502 and 2503. My dear friend, under the provisions of the Rogers act, they were not required to secure the consent of a majority of the abutting land-owners, and under the general law, you could not tear up a street without the consent of the residents thereon, or a majority of them. A body of four men, appointed by the mayor, without the remotest thought, when he was elected to that exalted position, of granting away the rights of the people for fifty years, to their streets. The gentleman said the Rogers law was better than the present law. Under the provisions of the present law the city of Columbus has one of the best street railway systems in the United States; it gives seven tickets for twenty-five cents, with transfers, it has low fare, it has splendid service — all under the laws that are general in their operation for the granting of franchises in cities. Under this other law there was a straight five-cent fare. Last winter I was in the city of Cincinnati and was honored in being the guest of the Commercial Club; the president of the Traction Company was there and it was a standing joke among those gentlemen, which they continually flashed in his face — the service accorded to the people of Cincinnati by that Traction Company.

Now, Mr. Chairman, they say that there is money invested in this enterprise, and that innocent holders have invested their small earnings therein. I think it was demonstrated by the question submitted to the gentlemen from Hamilton by Mr. Painter, that certainly the bulk of the

stock of this company is not in the hands of the poor people — that the poverty stricken people of Cincinnati do not possess the share of this company, or the stock of this company. It is listed at \$20,000,000 or \$25,000,000; 73 and 1-3 per cent. of that, they say, is held by laboring men, by mechanics, by washerwomen and so on and so forth — almost 75 per cent. of \$25,000,000, that would be something like \$15,000,000 or \$17,000,000, divided, as they say, among 5,000 stockholders, which would average over \$3,000 per capita. The proposition is simply ridiculous, that the poor people of Cincinnati have their earnings invested in this company. Did these men who have invested their earnings in this company go into it innocently? Did they not know there was a question as to the constitutionality of the law under which that authority was granted? Did they not know that the law was repealed under which that franchise was granted? If I go out into the market and buy a horse, and I bring that horse home and put it in my stable, and the next morning find that the horse is blind, can I go for relief to the man from whom I purchased the horse?

Mr. Worthington: If misled, you can. If it was misrepresented, you can.

Mr. Cole: It would be a very difficult matter to misrepresent a blind horse. And it is equally evident that the men who invested their earnings in this enterprise understood the nature of the title to that franchise.

Now, Mr. Chairman, I think I have concluded what I intended to say upon this proposition. But as to the ethical side of this proposition: We have heard, it is said, from twenty-nine people in the city of Cincinnati, through a certain gentleman upon that delegation, who have some money invested in this enterprise. Is it not better that twenty-nine should suffer than that 352,000 should be denied their rights? If one member offend you, cut it off, rather than permit the whole body to be cast into those profound depths spoken of in the Scriptures. And, sirs, I maintain it will be no act of disgrace, it will entail no disgrace upon the members of this House, if they refuse to foster any act bearing with it such odium as attaches to the Rogers franchise law.

Mr. Silberberg: I wish to state to Mr. Cole that he misunderstood me. I said I heard from twenty-nine people, and they, in turn, communicated with many other people. I asked them to ascertain from their friends and neighbors as to whether they wanted this franchise cured.

Mr. Worthington: They were stockholders?

Mr. Silberberg: That I don't know.

Mr. Guerin: I want to say but a word or two. I want to say that I do not think I was casting any imputation upon the character of my friend, Mr. Painter, of Wood, for there is no man in this assembly whom I esteem more highly and honor more greatly, than he, both as to his ability and as to his character. I simply said that he was opposed to a long-term franchise, and that that was the principle upon which he stood, and not the interests of the people of Cincinnati.

Mr. Cole has said we have heard from twenty-nine people. We are hearing from the entire population of Hamilton county today by a representative delegation in the state legislature, and we are hearing from them again, through Senator Foraker, for he and the other men who were in the saddle when that law was passed, are today again in the saddle and holding the reins of government in the city of Cincinnati. Does that look like repudiation? The gentlemen would deceive you —

Mr. Cole: Why did they repeal the law, then?

Mr. Guerin: Because the public were deceived with reference to that franchise — is why. I say to you that if the public, if the people knew how they were protected, they never would have repealed that act; they might have amended it so that the term of the franchise would not be from the date of the passage of the act, but in other respects that act was far ahead of the acts upon the books today. All these abutting property owners do not have to give their consent. Why, gentlemen of the committee, the legislature of the state has the right to grant the use of any street in any county of this state to a street railway company, if it want to do it. Take your atlas and look at the interurban line; where do they go? You will find the companies have had to buy up, if you please, the men who held them up, for money, before they would give their consent. Just examine your books and see what you find.

Mr. Cole: Would you take that right away from the people?

Mr. Guerin: No; but I say to you that it is sometimes exercised as a game of hold-up, and hold-up alone, without regard to whether it will benefit the cities and towns.

Mr. Williams: If I understand the case now, it is left to the people, under the amendment offered by Mr. Stage — it is left to the vote of the people?

Mr. Painter: I only want to say a very few words, but the gentleman from Erie finally got down, in his argument, to the opinion that it is the people who are dishonest, not the corporations. As far as this

amendment, and the whole business is concerned, thus far, I hope the members of the committee will vote it all down.

Mr. Bracken: Under the conditions we attached to this subject yesterday, the main object was, that the gentleman from Erie might have a chance to speak on his proposition to submit the question to arbitration. He has not touched that subject yet. He has not approached it at all this evening, but has injected something entirely foreign to that phase of the discussion.

Mr. Guerin: I am taking them one at a time.

Mr. Bracken: But that was the principal one, I believe?

Mr. Guerin: Yes.

Mr. Bracken: I am generally favorable to any proposition that submits a matter to the people, but under the present conditions, I would not like to close this matter by simply voting for that alone. It was understood this arbitration matter was the principal reason for postponing this.

Mr. Guerin: I will say to you, Mr. Bracken, that that proposition will be presented in due time.

Mr. Bracken: I believe the safest way would be to vote this proposition down now.

The question being on the amendment as amended, a roll-call was demanded and resulted as follows:

Ayes — Guerin, Price, Williams, Metzger, Allen, Silberberg, Worthington, Stage, Sharp.

Nays — Painter, Cole, Thomas, Chapman, Denman, Hypes, Willis, Bracken, Ainsworth, Maag.

On motion, the committee recessed to 7:30 P. M.

MEETING OF SUB-COMMITTEE ON MUNICIPAL CODES.

Thursday, September 25, 1902, 7:30 P M.

The committee met pursuant to adjournment. On roll call the following members responded:

Painter,	Allen,
Guerin,	Worthington,
Price,	Denman,
Cole,	Hypes,
Williams,	Willis,
Metzger,	Stage,
Thomas,	Bracken,
Chapman,	Maag.

Mr. Stage explained his reason for changing his vote on the amendment to the amendment of Mr. Guerin at the afternoon session, as follows: When I offered the amendment to the amendment of the gentleman from Erie I thought I would be able to accomplish something by which we could have the decision of the people of Hamilton county on that question. After that was offered an examination of the amendment offered by the gentleman from Erie convinces me that the object which I sought to accomplish would not be subserved, because this amendment of the gentleman from Erie seeks not to give the council power to grant a franchise but seeks to grant it from the legislature. The effect, then, of the amendment which I proposed would be, I think, upon due consideration of it, to give the people of Cincinnati the power to approve a law passed by the legislature, which is in conflict with article II, section 26, of the constitution. Feeling as I do now upon an investigation I wish to be recorded against the amendment which I offered.

Mr. Hypes, on behalf of the sub-committee on parks and hospitals, presented a report recommending the adoption of the following as section 135b:

Section 135b. "In any municipal corporation which has become or may hereafter become the owner or trustees of property for any park or

hospital purposes, or of funds to be used in connection therewith, by deed of gift, devise or bequest, said property or funds shall be managed and administered in accordance with the provisions or conditions of said deed of gift, devise or bequest, provided that in all cases where such deed of gift, devise or bequest requires the investment, or change of investment of the principal of said property or funds, or any part thereof, to be made upon the approval of any advisory committee appointed by any court or judge, then such property, or funds, secured by deed of gift, devise or bequest, for any such purposes, and any hospital property for the care or management of which in whole or in part, said fund is used, shall be managed, controlled and administered by a board of trustees consisting of four resident electors of said municipal corporation who shall be appointed by the sinking fund trustees of said municipal corporation and shall serve without compensation for the term of four years and until their successors are appointed and qualified. Said trustees shall be appointed in the first instance to serve for one, two, three and four years respectively, and thereafter their successors shall be appointed one each year to serve for the term of four years, provided, however, that of the four trustees so appointed not more than two shall be of the same political party. In case of vacancy by death, resignation, or otherwise in such board of trustees, the same shall be filled in like manner for the remainder of the term. Said board of trustees shall have the right to apply, control and invest and reinvest the funds coming or arising from such gift, devise or bequest, according to the terms and conditions on which acquired; and shall be the successors of any board or officers now having control or management of any such property or funds herein described, and said funds or other property then held and controlled by any theretofore existing park or hospital board, and the duties vested in or imposed upon such boards or officers shall be transferred to the trustees herein provided."

The report was adopted and the section approved.

Section 9. Mr. Allen moved that sub-section 13 of section 7 be adopted.

Mr. Denman moved to amend the section so as to read as follows:

"To regulate the erection of fences, billboards, signs and other structures within the corporate limits; to require and regulate the numbering and renumbering of buildings by owners or occupants thereof; to regulate the repair of, alteration in and addition to buildings; to provide for the construction, erection and placing of elevators, stairways and fire-escapes in and upon buildings; to provide for the removal and repair of insecure

buildings, billboards, signs and other structures, and to provide for the inspection of all buildings or other structures and for the licensing of house-movers, plumbers, sewer tappers and vault cleaners."

The amendment was carried and the sub-section as amended was adopted.

Section 89. Mr. Thomas moved to strike out all of lines 977, 978 and 979 and substitute the following :

Section 89. (Treasurer). "The treasurer shall be appointed by the mayor, subject to the confirmation of the city council, for a term of two years, and shall serve until his successor is appointed and qualified. In case of any vacancy in the office of city treasurer, the vacancy shall be filled by appointment of the mayor and confirmation of council, for the unexpired term. And in any cities embracing a county seat the county treasurer shall be eligible to be appointed to the office of city treasurer, and when the county treasurer fills the office of city treasurer the city council shall fix his compensation, which shall not exceed five hundred dollars per annum."

On the roll being called, there were eight votes for and eight against the motion, which was declared lost, and the original section was approved.

The committee then proceeded to the further consideration of the report of the sub-committee on franchises.

Mr. Guerin moved as an amendment that the report be amended by the substitution of the following for section 35 of House Bill No. 5 :

"No grant of a franchise or right to occupy or use any public street, high-way, alley or land shall be made to any urban or interurban street railway company, or any extension or renewal thereof or the extension or renewal of any such existing franchise, by the county commissioners of any county or the council of any city or village in this state, except that such franchise, extension or renewal shall contain explicit agreement upon the part of such company, for itself and for its successors and assigns, as and for a part consideration for such grant, that said company shall thereafter and by such grant it does accept and agree to perform and keep upon any line or lines of street railway by it owned, leased, operated or controlled, or thereafter by it so acquired, owned, leased, operated, managed or controlled, within the state of Ohio, the following conditions set forth in this act :

"In the event of any dispute or disagreement between such company and a majority in numbers of its employes, or a majority in numbers of its

employees in any one or more of the departments of such company on its line of railway, or on any branch or division thereof with reference to the terms or conditions of their employment by such company, which dispute or disagreement cannot be amicably settled between such employees and such company, and where such employees desire that such matter or matters shall be submitted to arbitration in order that they may continue in the employ of such company and thereby not interfere with the business of such company, or cause inconvenience or interruption to the business of the public, such company shall arbitrate such matters in the following manner to-wit :

"A majority in numbers of such employees in any one or more or all, of the departments of such company on the line of its railway or on any division or branch thereof, shall, by notice signed by a majority of such employees, and duly served upon the superintendent, or any one of the other chief officers of said company, by any person authorized by such employees so to do, notify such company that such employees desire to submit the matter or matters in dispute to arbitration, and said notice shall clearly state the following facts :

(1) "The matter or matters of difference, dispute or disagreement existing between said company and said employees, and the inability of said parties to agree as to a satisfactory settlement thereof, so far as said employees are concerned.

(2) "That the employees signing such notice will submit such question or questions of dispute or difference to arbitration, and that they will accept as final and keep and perform on their part the judgment of the board of arbitration which shall try and render judgment upon said matters in dispute.

(3) "That such employees will continue under the then existing terms and conditions of employment, will not leave the employ of such company, but will continue to perform the duties for which they were employed, or which they may be directed to perform until the result of such arbitration is determined and will at such time abide thereby.

(4) "The name of the person selected by such employees to represent them on the board of arbitration herein provided for and the time and place when such board of arbitration shall first meet.

"Such company shall thereupon after receiving said notice forthwith select some suitable person to act as an arbitrator in its behalf, and said arbitrator shall meet the arbitrator selected by said employees at the time and place mentioned in said notice. Said two arbitrators when so selected

shall thereupon select some suitable disinterested third person to act as the third member of said board. In the event that said two arbitrators are unable to select a suitable disinterested third person, it shall be the duty of the governor of the state of Ohio, upon request of either of said arbitrators, to select and appoint some suitable disinterested person, and such person, when so selected and appointed by the governor, shall constitute and be the third member of said board. In the event that any such company shall fail to appoint an arbitrator in the manner herein provided, and within three days from and after the date of the service of notice upon it as herein provided, or that such arbitrator having been selected shall fail to act as such, the commissioners of any county, or the council of any city or village in which such company is in whole or in part situate, shall, upon the application of the arbitrator appointed by said employes, appoint a suitable and disinterested person to act as an arbitrator for such company, and said arbitrator, when so appointed, shall have the same powers and privileges as if appointed by such company. Said board, when so selected, shall forthwith proceed to organize and to inquire into, and to ascertain the nature of the dispute or disagreement, between said employes and said company; the reasonableness or unreasonableness thereof as the case may be; the ability of such company to comply with the demands of its employes, and all such other matters as it shall deem necessary, to determine the matter in controversy, and said board, after recording a full and fair examination and consideration of such question or questions, and after having given opportunity for each party to be heard by council or otherwise shall render its judgment which shall be final. The cost of such arbitration, if any there be, shall be paid in the manner ordered by said board and said board may require both parties to give bond for the payment of said costs in such amount as they deem necessary before the commencement of said proceedings, and the result or judgment of said board shall be final as between the said parties for a period of not less than one year from and after the rendition of the same.

"Each member of said board shall have power, while inquiring into the matters referred to them, to administer oaths, to compel the production of books and papers, and to compel the attendance and testimony of witnesses before them in the same manner as like power is conferred by law upon a notary public."

Mr. Stage seconded the amendment, which, on roll call, was carried, yeas nine, nays eight.

Mr. Stage moved, that section 29 of House Bill No. 5 be stricken out and that there be substituted therefor the following:

Section 29. "Council shall have power to grant the use of the streets, or other public places, for street railway, natural or artificial gas, electric or other light, water, pneumatic tube, or other parcel transmission, heat or power supply, telephone or any other similar purpose and the right to use the streets or other public places under such grants may extend over, upon, along, across or beneath the surface thereof."

That section 30 of House Bill No. 5 be stricken out and that there be substituted therefor the following:

Section 30. "No such right shall be granted or renewed except by ordinance of council and no grant or renewal shall be valid for a greater period than twenty-five years; and whenever council shall by ordinance declare the terms and conditions upon which a grant or renewal will be made of any such right, it shall cause such ordinance to be published for thirty days in some newspaper of general circulation in the city or village and invite proposals under regulations therein specified and requiring an adequate bond with each such proposal to guarantee the performance of the terms of the grant, if awarded, to furnish the inhabitants thereof with the desired public service. Council may, upon the receipt of such proposals, make such grant or renewal to the person proposing to furnish such service at the lowest cash consideration to the smallest consumer.

In the event of there being more than one proposal at the lowest consideration, council may make such grant to either. Such grant or renewal when so made by council shall be valid only upon its receiving a majority of the votes thereon at any general or special election to which it shall be submitted as council may direct. Provided, that when any renewal of any such grant is made by council to any other person than the person then owning it, council shall provide as one of the conditions thereof that the grantee shall, before operating thereunder, offer to buy the real estate, plant, equipment, tracks and pavement of the former owner of the grant and tender in payment therefor an amount equal to the full value of all such property as a going concern plus twenty per cent. thereof; but such value shall be estimated so as to make proper allowances for depreciation and so as to be exclusive of the value of any rights in the streets or public places, franchise or good will and in case the parties fail to agree upon the sum so to be tendered, council shall by ordinance fix such a sum and the tender thereof by the grantee to the former owner shall satisfy the condition so imposed upon said grantee."

That section 31 of House Bill No. 5 be stricken out and that there be substituted therefor the following :

Section 31. "Council shall have power at all times to adopt police regulations with respect to the use of the streets or other public places by the grantees of any such rights and with the consent of any of such grantees to secure more favorable terms to the municipalities in the operation of any grant herein authorized; but council shall have no power to release such grantees from any obligation or liability imposed by the terms of said grant or renewal of any grant during the term for which said grant or renewal shall have been made."

That section 34 of House Bill No. 5 be stricken out and that there be substituted therefor the following :

Section 34. "Extension of existing railway routes may be made by the council of any municipal corporation to any person owning or having the right to construct any street railway within the corporate limits, whenever such extension is deemed beneficial to the public interests, provided, that such extension shall be included in the existing route without increase of fare and provided that the rights under said extension shall expire at the same time as those conferred in the original grant and the terms upon which such extension may be made shall not be less favorable to the public or to the municipality than those imposed in the grant of the original route, and provided further, that before any work is done upon the streets or other public places over which the tracks of such person are to be extended, said person shall produce to council the written consent of a majority of the abutting property owners upon such street or part thereof represented by the feet front of the property abutting on the several streets along which such extension of any existing route is proposed to be constructed."

That section 2501, 2502 and 3439 of the Revised Statutes of Ohio be repealed.

Mr. Stage: I want to say by way of preface that I note with the profoundest regret a disposition on the part of members of this committee at this time, after having so long and so faithfully labored over questions concerning the formation of a municipal code, working as we have almost night and day, when perhaps the most important question before us for consideration, namely, the use of the streets of the municipalities for which we are formulating a code, comes up for consideration, to shirk that question and to get rid of it. I appeal to every member of this committee if it is not true that there never was a time and there never will be a time when

questions of this character so momentous to the people of this state can be settled and settled right as at the present.

I hope that the members of this committee will change their minds about that so that the provisions that we wish to insert in the franchise provisions of the code shall be the best that possibly can be gotten and promote fairness as between the people on the one side whose rights we are trying to protect, and the corporations on the other whose rights we are not here to take away.

I have a mild criticism at this point to offer on the committee on franchises. This committee was convened five weeks ago. The sub-committee on franchises was appointed within a week. They have had this subject in their control for a month, ample time — more than ample time — to thoroughly investigate this question from every point of view and present to this committee a well-considered report on this question.

I want to disclaim here and now any hostility to corporations. We can not get along without corporations and I want to testify here as a matter of record to the great benefit that corporations have been, especially along the lines that were discussing here, primarily street railway corporations, in buidling up and advancing and accelerating the material progress of our cities, and the great convenience and benefit they have been to the citizens of these communities. And the only point I have in mind, and I am here speaking for one single purpose, is to so adjust the scale as between the people who own the streets in municipalities and the street railway corporations that the balance will be somewhere even.

My friend from Huron made a little speech before this committee when this matter first came up for consideration the other day and he led this committee to beileve — I can not conceive that he believes it himself, he may, but I have always had a higher opinion of his astuteness than that — he tried to lead this committee to believe that it was the corporations who were behind this question of altering the law concerning franchises as they stand on the statute books to-day. Well, now, we have not anybody in the state of Ohio who is a greater exponent or a greater example or a better friend of the corporations than our beloved junior senator, and first he comes down here and says that perpetual franchises are the thing, and the chairman of the sub-committee in a kind of partial report said that while that proposition might be defended as a business proposition, they had come to the conclusion that it was not good policy at this time. The next day the senator very gravely denied that he ever wanted any such

thing, and now he comes back as a representative of the corporations and says "all we want is to let the franchise question alone."

I suppose I would not be far wrong if I said that the capitalization of street railway corporations in the state of Ohio was somewhere in the neighborhood of one hundred millions of dollars. By the interesting testimony of the members from Hamilton before this committee this afternoon it was shown that in the case of the Cincinnati Traction Co. they had an investment there approximating five millions of dollars and they had a capital stock of twenty-five millions. Now, the same ratio probably holds in other cases, I know it does in Cleveland, and what is the result? Out of the one hundred millions of dollars valuation or capitalization of those companies in the state of Ohio, seventy-five millions, or thereabouts, represents the franchise rights which the people of this state have given them, and what for? In some cases for nothing, in other cases for what is a mere bagatelle, and what is worse than that, under the arrangement which they have to-day in Cincinnati by which the street railway company pays five per cent. of its gross receipts into the city, the poor people of the city of Cincinnati have to pay for the right of riding on the street cars on the streets of that city, because the people who ride on the cars are the ones who pay the city and not the street railway company. Isn't this question of sufficient importance to be taken up and disposed of in an honest, fair way, so that the rights of the people and their streets may be protected?

I wanted the members of this committee to examine the statutes and satisfy themselves upon them. I know they did not do it, and it is a shame that a question of this character should be attempted to be passed over in this manner. In section 2501 and section 2502 you can enumerate some twelve or thirteen or fourteen conditions which every company which seeks to get a new grant from a city has to conform to before they can get it, and even at that the council of a municipality to-day cannot take the initiative to get bids on these propositions but have to wait for somebody to come along and apply. They must go through all these technical operations before they can get a grant. That is policy and perhaps that is right if it worked fairly for other corporations who are seeking to get into the corporation or to establish other lines, because everyone must concede it to be true that new grants are relatively valueless. The rights of these corporations which to-day hold the streets of our cities in their grasp were not all granted at once. We all remember the little dinky line and the tinkling bell on the horse-car that went eight blocks, perhaps. Extension

after extension have made those lines to-day cover the best portions of the city, probably the only paying portions. There are two hundred miles of that class of line in Cleveland.

Now, any corporation that wants to get into one of our cities must go through the process and they have got to go through and over lines that are relatively valueless, because the corporations that already are established have an absolute and complete monopoly of the best lines. Now, that is absolute monopoly, and I want to say to the members of this committee that it is that kind of law-made monopoly and privilege that is giving these people and these corporations an unfair advantage in the race of life.

But after the expiration of their franchises how about renewals, when their franchises have increased in value by the increment of population? Can you have somebody else come in and compete with a corporation such as the Cincinnati Traction Co., for instance, that wants to charge five cents fare for fifty years? There is a little line at the end of section 2501 which says council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest. Can you review it after the council has decided what is for the public interest? Not at all. The courts have said that the council has that discretion in the matter which will not be reviewed by a court of equity except for fraud. So I say to you that corporations which hold our streets to-day will continue to hold them under the law as it is and you cannot get them out and you cannot get anybody to compete. Is that right? Do you want to leave the law that way? I am not pleading here for something that is unjust, that is wrong, but I say it is our duty to take this matter up and correct those things in the statutes.

The provision in the statutes requiring consents was put in there by the corporations to keep out competition and for no other reason. In Cleveland we had a little experience which may throw light on this question. The council advertised for bids on some of those by-streets and side-alleys relatively valueless for traffic, not congested and not used by the people as public thoroughfares to anywhere like the extent that the streets that the present lines cover are used. We got a bid of three cents a passenger, five tickets for 15 cents, for lines, as I have explained, relatively valueless. An injunction followed, but worse than that, opposing interests bought up consents on streets over which those routes were advertised and went so far as to contract in writing to pave the streets at their own expense if the people thereon would withhold their consents. They said,

and they say to-day, that a three-cent road will involve in financial disaster and ruin the men who inaugurate and try to operate it. If they believed it, what a grand example it would have been to have let them build the road and invite upon themselves financial disaster.

No, no. They happened to have in Cleveland a mayor who had been in the street railway business and when they bought up a whole street on which they had not received a majority of consents but had a majority of consents on two streets that were almost continuous, he simply went in and changed the name of the three streets to one and they had the majority of the consents on that. Then they appealed to the courts and the whole proposition was thrown out because they had changed one little street about a block long and parallel to the one advertised as a route, and then when they were readvertising the council was enjoined from granting a franchise in the common pleas court. This was dissolved by the circuit court on a full hearing and continued again by one judge of the supreme court without hearing; and upon a hearing by two judges of the supreme court the condition exists that the council of the city of Cleveland cannot grant a franchise to a company for a three-cent fare for twenty-five years, but the Cincinnati Traction Co. is up here asking this legislature to grant them a forty-four franchise and a five-cent fare to shut out all competition.

On this question of renewals the amendment which I offered here brings them in as original grants. Existing companies have all the advantage in competition, being established, with their plant built and all their equipment. Is it any more than fair and just and right that somebody else should come in there and have the right to bid, and if they offer better terms ought not the municipality to have the right of those better terms? But you can not do that under the existing laws. And, moreover, the amendment provides that where there are two bids of the same character, the same terms, the same conditions, the council may give the franchise again to the old company.

Now, on the question of extensions, every extension of a street railroad line ought to expire at the time that the original grant expires, otherwise competition is absolutely shut out.

I think I have said enough to convince every member of this committee of the great importance at this time of taking up this question. By putting off this question you make it possible that these laws shall remain in force and that rights may be granted under them involving millions of dollars.

It is not difficult to remodel these sections. That is of no greater magnitude than many things that we have taken up here and decided, and the immense importance of the question demands that every member of this committee who has come here sworn to do his whole duty should not now when we have worked so faithfully and so honestly, have it charged up against him, as it will be charged and honestly charged, that he has shirked his manifest duty.

Mr. Price moved to amend the amendment by striking out the following words: "Such grant or renewal when so made by council shall be valid only upon its receiving a majority of the votes thereon at any general or special election to which it shall be submitted as council may direct."

The amendment to the amendment was lost, yeas five, nays ten, and the amendment was then put and lost, yeas four, nays twelve.

Mr. Guerin moved to amend the report of the sub-committee by re-enacting section 2502 of the Revised Statutes, with certain omissions, as section 35a of house bill No. 5, as follows:

"No ordinance or resolution to establish or define a street railroad route shall be passed, and no action inviting proposals to construct and operate such railroad shall be taken by the council, and no ordinance shall be passed until public notice of the application therefor has been given by the clerk of the corporation in one or more of the daily newspapers, if there be such, and if not then in one or more weekly papers published in the corporation, for a period of at least three consecutive weeks; and no such grant shall be made, except to the corporation, individual or individuals that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property holders upon each street or part thereof, on the line of the proposed street railroad, represented by the feet front of the property abutting on the several streets along which such road is proposed to be constructed; provided, that no grant nor renewal of any grant for the construction or operation of any street railroad, shall be valid for a greater period than twenty-five years from the date of such grant or renewal; and after such grant or renewal of a grant is made, whether by special or general ordinance, the municipal corporation shall not, during the term of such grant or renewal, release the grantee from any obligation or liability imposed by the terms of such grant or renewal of a grant."

Mr. Allen seconded the amendment, which, on roll call, was lost, yeas seven, nays ten.

Mr. Guerin moved to amend the report of the sub-committee by adding thereto section 3438 of the Revised Statutes, except that portion of said section which reads as follows: "Except, however, in granting permission to extend existing routes in cities of the first, second, and third grade of the first class, and first grade, second class, such cities, and the companies owning such route, shall have the same rights and powers they have under the laws and contracts now existing."

Mr. Stage seconded the amendment, which on roll call was lost, yeas six, nays ten.

Mr. Stage moved as an amendment that the report of the sub-committee on franchises be amended in the following particulars:

On page 17, after section 34, insert, Section 34a. "Council shall at all times have power to acquire or construct the necessary equipment and plant for street railway service within such city or village, and in the making of any grant to any person for the use of the streets and other public places for street railway purposes under the foregoing sections, council may reserve in such grant the right to the municipality to acquire the real estate, equipments and tracks owned or constructed by such person under such grant, upon such terms as council may provide; provided, that if at any time council determines to acquire the street railway property of any person constructed under such grant, the purchase price thereof to the municipality shall not be less than the full market value of such property as a going concern, including real estate, fixtures, equipment, tracks and pavement, plus twenty per cent. thereof, and provided further, that such value shall in no case include any element of franchise or good will and that there shall be included therein nothing for the right to use the streets and public places of such municipality."

Section 34b. "When council of any municipality determines to acquire or construct any street railroad under the provisions of this act, council shall have power to cause to be issued and sold, bonds of such municipality in an amount sufficient to provide for such acquisition and purchase and to secure the payment of said bonds by a mortgage to be executed by the mayor on behalf of such municipality; and covering all of the property of such street railroad plant and equipment; and such bonds when so issued and so secured by a pledge of such property shall not be included in the debt limit of any such municipality."

On roll call the amendment was lost, yeas four, nays thirteen.

Mr. Worthington moved that the report of the sub-committee be laid on the table. Motion lost.

The question now being on the adoption of the report as amended.

Mr. Hypes moved a reconsideration of the vote by which the arbitration amendment of Mr. Guerin was adopted.

Motion to reconsider lost, yeas eight, nays ten.

Mr. Price moved as an amendment that sections 33, 34, 35 and 36 of House Bill No. 5 be recommended for passage as they stand in the bill.

Mr. Guerin seconded the amendment, which on roll call, was lost, yeas four, nays thirteen.

The motion to adopt the report of the sub-committee as amended was then put and lost, yeas eight, nays nine.

Mr. Price moved a reconsideration of the vote by which the motion to adopt the report of the sub-committee as amended was lost, and on roll call the motion to reconsider was carried, yeas ten, nays six.

A motion to adjourn was lost, yeas seven, nays ten.

Mr. Williams moved as an amendment that the report of the sub-committee on franchises be reported back to the house without recommendation.

The amendment was carried, yeas nine, nays eight.

The question now being on the motion as amended by Mr. Williams, a motion to adjourn was made, which carried, yeas nine, nays eight.



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